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THE
Progressive Movement

*A Non-partisan, Comprehensive Discussion
of Current Tendencies in American Politics*

BY

BENJAMIN PARKE DE WITT, A.M., LL.B.

New York

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THE PROGRESSIVE MOVEMENT

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PREFACE

So much attention has been given to the rise and development of the Progressive party in the United States that there has been a tendency to overlook the larger and more fundamental movement of which it is a part. Although this movement had struck its roots far back in the past and was already vigorous and growing when the campaign of 1912 began, the sudden, meteoric appearance of the new party, the striking personality of its candidate for President, and the wide variety of issues raised, thrust the movement itself into the background. The result has been a confusion of the party with the movement, a belief that they advocate precisely the same principles, and a conviction that they must stand or fall together.

The progressive movement is broader than the Progressive party and, in fact, than any single party. It is the embodiment and expression of fundamental measures and principles of reform that have been advocated for many years by all political parties. Although differences in name, in the specific reforms advocated, and in the emphasis placed upon them, have obscured the identity of the movement, the underlying purposes and ideals of the progressive elements of all parties for the past quarter of a century have been essentially the same. To make clear this universal character of the progressive movement is one of the objects for which this book has been written.

To accomplish that object, a brief survey of the conditions surrounding the formation of the federal and early state constitutions is given, together with an account of the political, social, and economic factors that have made the rise of the progressive movement natural and inevitable. The breadth and extent of the movement are indicated partly by showing the large place it has filled and now fills in each of the important political parties, and partly by explaining in detail the issues and reforms of the movement as they apply to the nation, the state, and the city.

The second object of the book is to give form and definiteness to a movement which is, in the minds of many, confused and chaotic. Unquestionably the great majority of voters in this country are dissatisfied with existing political and social conditions and desire to see a change. Yet the friends of progress are frequently the enemies of each other, largely through lack of mutual understanding and a failure to realize that they stand for practically the same fundamental things. The movement has, therefore, been carefully defined as having three distinct phases, and on the basis of these three phases the important reforms advocated by progressive leaders in the different parties have been classified and correlated. Although it would be impossible to discuss all these measures exhaustively without losing the perspective of the book, prominent reforms such as mothers' pensions, the minimum wage, preferential voting, and the city manager plan, have received sufficient attention to enable the reader to know what they are, the extent to which they have been adopted, and the arguments commonly advanced for and against each.

The point of view throughout has been non-partisan, but the spirit of treatment, it must be said, has been sympathetic. No one can study the progressive move-

ment, no one can read the lives of its pioneers and advocates without feeling its strength and vitality and realizing that it is a potent force in our political and social life. War and business depression may divert the attention of people from progressive reforms for a time. But, sooner or later, that attention will return, more earnest and more intense, and the principles of the movement will receive a new emphasis and a wider application.

BENJAMIN P. DE WITT.

*Elmhurst, N. Y.,
February 3, 1915.*

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PART I

THE ORIGIN AND DEVELOPMENT OF THE
PROGRESSIVE MOVEMENT

CHAPTER I

THE MEANING AND HISTORY OF THE PROGRESSIVE MOVEMENT

THE term "progressive movement" has been so widely used, so much discussed, and so differently interpreted that any exposition of its meaning and principles, to be adequate, must be prefaced by careful definition. To some—comparatively few—the progressive movement stands for the attempt of one man, disappointed in his efforts to control his political party, to found another and return himself to power. To others, who are willing to concede that the movement is not confined to a single leader, it represents the efforts of a small body of self-seeking politicians to gain position and influence by making capital of a movement that is temporarily popular. To others, the movement expresses the effort of a few sincere but misguided enthusiasts to carry out an impossible and chimerical program of social reform through government and legislation. Some believe that the movement is partisan, limited to the party that bears its name; others believe that it is broader than any single party and that its supporters are found in political parties everywhere. Some believe it is new, fleeting, and evanescent, destined to disappear quickly from our political life; others hold that it is permanent, deep-seated, and fundamental, involving a modification and readjustment of our political theories and institutions.

Whatever difference of opinion may exist concerning the meaning of the progressive movement, every thinking man and woman must be convinced that the nation to-day is passing through a severe political crisis. After a period of unprecedented industrial and commercial expansion, during which time little or no attention has been given to the problems of government, the people have suddenly realized that government is not functioning properly and that radical changes are needed. Manifestations of this excitement and unrest are seen on every hand. Men write of a new democracy¹ and a new freedom.² In 1912 the vote of the Socialist party—the party of protest against existing conditions—almost reached the million mark; and in the same year a new political party, appealing to new ideals and new standards, polled four million votes. The Democratic party in the nation, after a stormy convention, nominated and elected as President, in 1912, a leader who insists upon high standards of public service; and the Republican party, chastened by defeat, and forced to recognize the present political tendencies, has already set about the work of party regeneration in many states. Everywhere there are evidences that the nation has passed into a new political era.

In this widespread political agitation that at first sight seems so incoherent and chaotic, there may be distinguished upon examination and analysis three tendencies. The first of these tendencies is found in the insistence by the best men in all political parties that special, minority, and corrupt influence in government—national, state, and city—be removed; the second tendency is found in the demand that the structure or machinery of government, which has hitherto

¹ Weyl, *The New Democracy*.

² Wilson, *The New Freedom*.

been admirably adapted to control by the few, be so changed and modified that it will be more difficult for the few, and easier for the many, to control; and, finally, the third tendency is found in the rapidly growing conviction that the functions of government at present are too restricted and that they must be increased and extended to relieve social and economic distress. These three tendencies with varying emphasis are seen to-day in the platform and program of every political party; they are manifested in the political changes and reforms that are advocated and made in the nation, the states, and the cities; and, because of their universality and definiteness, they may be said to constitute the real progressive movement.

To understand the origin and development of the progressive movement, it is necessary to consider briefly the circumstances surrounding the formation of the federal constitution in 1787. The men who framed that constitution had to decide two questions: first, how many and what functions government, as opposed to the individual, should be allowed to exercise; and, secondly, what power should control the exercise of these functions.

Now, at the time our federal constitution was adopted, there were at least three reasons why the people desired as little interference as possible by the government in the affairs of the individual. In the first place, the colonists had just finished a war with England, a war which it is ordinarily supposed was justified as a protest against taxation without representation, but which was rather a desire to get rid of a government that was becoming irksome. The colonists appealed to the inherent right of man to be free. After emerging from a long and severe struggle to rid themselves of one government, they were not in the mood to impose upon

themselves another. They had had enough government; they would see now what the individual could do.

A second reason for limiting the powers of the government is to be found in the political theory prevalent at that time. Rousseau ¹ had proclaimed the superiority of the individual over the state and attempted to explain how the state received its power originally. Man was originally, according to Rousseau, in a state of nature. He was free in all respects. Necessity compelled him to yield his individual liberty to the state, but even then he and his fellows were entitled to absolute control of the state. The theory of Rousseau became widely popular. The individual was apotheosized. In America, Paine wrote "Common Sense" and "The Rights of Man," both imbued with the doctrine of Rousseau. Jefferson wrote the Declaration of Independence, with its insistence on individual liberties. Of Jefferson's opinion on the extension of the powers of the state, one of his biographers says: "He could hardly bring himself to declare that the people should govern, *because he had a lurking notion that there should be no government at all.* 'The rights of man,' the favorite slang phrase of the day, signified to his mind an almost entire absence of governmental control."² The political philosophy of the day was *laissez-faire*.

A third and final reason why men restricted the powers of the state was the needlessness of governmental interference. In most cases, the individual could take care of himself. The men in the country at that time were the boldest and most self-reliant that Europe had contained. They would have scoffed at the idea of having any 'superior power tell them how long they ought

¹ In his *Contrat Social*.

² Morse, *Thomas Jefferson*, p. 111. The italics are mine.

to work and what pay they ought to receive. Then, too, social and economic conditions allowed individual action. In 1790 only six cities had 8,000, and only two, 25,000 inhabitants. Land was plentiful; the great West with all its opportunities for wealth-making was unexplored. No wonder the colonists felt confident in their own ability to take care of themselves; no wonder they despised government and felt within them the thrill and inspiration of a new freedom.

When we approach the second important question which the colonists had to decide; i. e., by whom the exercise of governmental functions should be controlled, we find no end of confusion. The colonists, we have seen, decided that government, as opposed to the individual, should exercise as few functions as possible. When they came to decide into what hands the exercise of these few governmental powers should be placed, two possibilities offered themselves. One was to place the people, in a fairly broad sense, in control; the other was to place in power a small minority which, protected from the clamor of the people by numerous checks and balances, would govern in the interests of the best citizens. There is no reason why men should divide on this second question exactly as they do on the first. A man may believe in extending the power of the state over many functions now exercised exclusively by the individual and still be opposed to allowing a majority of the people to direct the exercise of those functions. Germany to-day is perhaps the most paternalistic of nations; it is far from being the most democratic. And the men back in 1787 did not divide in the same way on both questions nor lay equal emphasis upon them. Hamilton believed in the rule of the minority, and yet he did not advocate and in fact could not advocate (because there was no need) any great extension of gov-

ernmental powers. Jefferson believed that the people should be given control and yet believed that in an ideal state there would be no government at all. So far as restricting government to the exercise of a few functions is concerned, Hamilton and Jefferson were not very far apart; so far as the method of exercising the functions necessarily assumed by government is concerned, they were as far apart as the poles. In a word, in 1787, most men agreed in opposing any extension of the functions of government; they differed in their views as to the way in which the necessary modicum of government should be controlled.

The subject has been much beclouded because of the fact that in 1787 a new government was being formed. The colonies sent delegates to a convention to determine what governmental functions should be exercised by the new government. The questions that arose in that convention were not questions of the extension or restriction of the powers of government. They were questions of the extension or restriction of the powers of a particular government. They were questions concerning the division of powers between a government about to be formed and governments already existing. When we speak of Alexander Hamilton as favoring a strong government we do not mean that Hamilton wished to allow the state to control matters up to that time controlled by individuals; we mean that Hamilton wished to take power from the separate colonies and confer it upon a central government. Hamilton's plan for a national government "embodied two ideas which were its cardinal features and which went to the very heart of the whole matter. The republic of Hamilton was to be an aristocratic as distinguished from a democratic republic, and the power of the separate states was to be effec-

tually crippled.”¹ Of the three great compromises of the constitution, between agricultural and commercial states, between large and small states, and between free and slave states, not one concerned the question of extending the influence of government generally.

The fight, then, in the constitutional convention was not over the extension of the functions of government, but over the method of controlling the functions to be exercised. On this point, there was great diversity of opinion. Of the three forms of government, the monarchy, the aristocracy, and the democracy, the last found the least favor. “. . . The fathers of the American Federal Republic . . . over and over again betray their regret that the only government which it was possible for them to establish was one which promised so little stability”² (i. e., a democracy). Hamilton favored a king, and most of the others favored some sort of aristocracy. “The evidence is overwhelming that the men who sat in that convention had no faith in the wisdom or political capacity of the people.”³ Jefferson, the prophet of the people, was not even there. The convention turned out a constitution calculated to give to a select minority the guidance of the destinies of the nation.

The federal constitution, therefore, provides for a government which shall touch the life of the individual at as few points as possible and which shall be dominated by a minority. The government then formed for the nation reflected the existing state governments as far as the extension of the powers of the state is concerned. It was not a true reflection, however, of the sentiment of the mass of people in the states as to the

¹ Lodge, *Alexander Hamilton*, p. 61.

² Maine, *Progress of Popular Government*, p. 71.

³ Smith, *Spirit of American Government*, p. 32.

method of control. Democracy was much more in evidence in the separate states than it could be under the elaborate system of checks and balances of the federal constitution. "Had the decision been left to what is now called 'the voice of the people,' that is, to the mass of the citizens all over the country, voting at the polls, the voice of the people would probably have pronounced against the Constitution . . ." ¹

Although the state governments were more democratic than the federal government, their democracy was not above suspicion. It was at best a diluted democracy, of the sort of which Periclean Athens was proud. Throughout the thirteen colonies there were thousands of slaves; most of the colonies imposed some property qualifications before granting the suffrage; in some colonies, profession of some religion was essential to holding office.² The quality of the democracy in the states is revealed fairly well by a glance at some of the early constitutions. That of Massachusetts, adopted in 1780, in its preamble, states that "the body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good." The same constitution provides that "every male inhabitant of twenty-one years of age and upwards, having a freehold estate within the commonwealth, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to give in his vote for the senators for the district of which he is an inhabitant."³ The same qualifications had to be met by voters for representa-

¹ Bryce, *American Commonwealth*, Vol. I, p. 26.

² McMaster, *With the Fathers*, p. 72.

³ In Chap. I, Sec. 2, Art. 2.

tives and governor. In the constitution of North Carolina, the statement is made "that all political power is vested in and derived from the people only."¹ The people are somewhat narrowly defined, however, as those who are possessed of a freehold of fifty acres of land and those who have paid public taxes. In most of the early state constitutions, there are similar inconsistent provisions which declare that the state is governed by the people and that the people are those who own property or pay taxes.

When the United States, then, began its career as a nation, the federal constitution, the state constitutions, and even the people themselves were opposed to any extension of the powers of government over the individual. General sentiment favored a minimum of government. As to who should control that minimum, opinion differed. A few favored control by a select minority. These few accomplished their aim as far as the federal government was concerned by introducing into the constitution checks and balances which made popular control impossible. Most men, however, favored a rather broad popular control; and they made their influence felt in the state constitutions by providing for a fair measure of democracy.

Nothing indicates more clearly that the framers of the federal constitution did not believe that the functions of government were going to be extended to any great extent than their failure to provide for political parties. They feared factions and parties, but they thought that they had effectually guarded against them. Like the proverbial ostrich, they stuck their heads in the sand and refused to see the approaching danger. The parties soon came; men did not look upon the government with the same disinterestedness that the Fa-

¹Sec. I, *Constitution* of 1776.

thers had hoped for. They meant to use the government. The plans for using the government were for a long time indefinite and unorganized. For the most part, men were interested in gaining a place of honor and profit with now and then a chance to "make a haul."

The first party to come into power was the Federalist. Its leader was Hamilton and its ranks contained Washington, Adams, and Marshall. It is often said that the Federalists stood for an extension of the functions of government and a larger control of the individual. Such statements are only partly true. At that time there was little need for much governmental interference in private affairs. There was great need of strengthening the central government, and to that end the Federalists bent most of their efforts. The Federalists, however, firmly believed in the domination of government by the few rather than by the many. The decisions of John Marshall as chief justice of the Supreme Court did more to intrench property and vested interests behind the bulwarks of law than any other single factor. Two things, then, the Federalists particularly emphasized: that the central government should be strong and that it should be controlled in the interests of the few.

The Republican-Democrats, or Democrats, who came into power in 1801, and retained control of the government with slight interruptions¹ until the Civil War, opposed the tendency to strengthen the national government and in fact opposed all government. To them government was a necessary evil, and the less there was of it the better. They therefore fought the central bank and the protective tariff and advocated non-interference in the question of slavery. Although the Democrats of this period believed in non-use of government to relieve

¹Harrison and Tyler, 1841-1845; Taylor and Fillmore, 1849-1853.

the individual, they perfected one profitable use to which government might be put. Under Jackson, the spoils system, until that time a mere seed in a fertile soil, broke through and grew to enormous proportions, giving shade under its luxuriant foliage to the weary and oppressed mob of officeholders. The Democrats, then, tried to curtail federal powers, and in fact all governmental powers, and sought to give the masses rather than the classes control.

In 1856, slavery was the chief question before the country. The tariff, the currency, and all other questions sank into insignificance as the people tremblingly sought the solution of a problem that threatened speedy national disruption. The Democrats supported a policy of non-interference by the national authority, squatter sovereignty. On the ashes of the Whig party, burned and charred by fiery internal dissensions, arose the Republican party, a party pledged to the control of slavery by federal enactment. The Civil War came. Lincoln stretched the federal authority to limits before unheard of and undreamed of. The seceding states were drawn back into the Union by force; millions of slaves were freed by presidential proclamation; federal authority was supreme.

At the close of the war, the Democratic party, the party that advocated limited federal powers, lay prostrate, discredited, the party of rebellion. The Republicans, unmolested, began to build up a strong party organization. All things were favorable to the preëmption of the government. The temptation was not long in coming. It had come before the war even. Railroads sprang up all over the country; industrial corporations of Brobdingnagian proportions put in their appearance. Strong men were behind the railroads and the corporations; they were also behind the Republican

party. Here was an opportunity to extend the powers of government—to use government. Here was a government designed by its makers to be controlled by a wealthy minority. The wealthy minority were not slow in seizing the opportunity. Land grants, franchise steals, favorable court decisions, supple politicians, appeared in a bewildering array. Long before the country realized it, the government was being *used*—not in the interests of the many, but in the interests of the few.

Meanwhile, the same complex conditions that were bringing wealth to the magnate and the railroad king were bringing difficult social and economic problems to the masses of people. Mushroom cities sprang up over night; thousands who had worked independently before now worked as units in a complex organization. The individual could not hope to compete with the wealthy corporation which employed him; and his particular product was almost worthless apart from the use to which the corporation might put it. Men became economic slaves. Corporations could make them work twelve, fifteen, or even eighteen hours a day; could place them in factories poorly lighted and poorly ventilated; could reduce wages to a minimum; could, in short, control them. Slowly, Americans realized that they were not free.

Instinctively, men turned to each other for support. They did not at first turn to the government for relief. They were still under the delusion that the government was a dispassionate, fair arbiter; and that was what they desired it to be. The workmen of the country tried to fight their own fight. They formed labor unions and attempted to force all those engaged in a certain craft to join. Capitalists had joined together: labor would join together, too; and united labor would oppose a solid front to united capital.

But the fight was too unequal. Capital, wealth, and the corporations did not play fair. The government was theirs and they used it with deadly effect. They secured what their opponents bitterly called government by injunction; they had laws limiting the number of hours a day a man might work declared unconstitutional; they fought factory regulation. Meanwhile, they strengthened their own resources. Stolen franchises were ratified; inflated capitalization was given legal confirmation; the tariff was adjusted to meet their needs.

The idea that permanent relief from oppressive conditions could be obtained only through governmental intervention slowly gained ground. Those who proposed the idea at first were called revolutionists and socialists and were regarded as visionaries. Soon, however, the government was appealed to in various ways to change existing conditions. Railroads could be curbed by commissions, the tariff could be lowered, corporations could be dissolved, incomes could be taxed. The people were under the delusion that they owned the government; they had used it little: now, they thought, it would have to succor them. Government and legislation would bring in the millennium.

Singularly enough, the government was not sensitive to popular appeal. Sometimes, indeed, it openly defied the people. For a long time, the people could not realize what had happened—the people could not understand that their government had passed beyond their control. They came to the government which they had made, intending to use it, and they found that it was already in use.

The people paused in their search for remedial legislation to discover what was wrong with their government. They found that the government was run in

strict accordance with the famous dictum attributed to Andrew Jackson, "To the victor belong the spoils." Incompetent, self-seeking, venal politicians were directing the affairs of the country. The people began to study the origin, history, and effect of the spoils system. They found that the spoils system had not always existed. The revolutionary presidents made honesty, capability, and fidelity the tests of fitness. "With Jackson's administration in 1830, the deluge of the spoils system burst over our national politics."¹ As time went on and the number of offices increased, the system grew worse. Startling disclosures of dishonesty were made in Grant's administration. Some of the President's secretaries were found guilty of bribery and corruption. General Babcock, the President's private secretary, narrowly escaped conviction on the charge of corruptly aiding the Whisky Ring to avoid the payment of revenues. It was proved that Belknap, Secretary of War, had received a portion of an annual payment of from six to twelve thousand dollars of bribe money given by a post trader at Fort Sill to retain his place.² The people clamored for reform. In response to the popular cry for civil service reform, based upon the belief that much of the corruption in government had its basis in the spoils system, President Grant in 1871 appointed a commission to investigate the subject. A second commission was appointed in 1883. Backed by popular sentiment, these and succeeding commissions placed under the protection of civil service hundreds of thousands of government employees.

The search for the source of special influence in government soon passed from individual corruption in

¹ Curtis, Speech on Spoils System, *Harper's Encyclopædia of United States History*, Vol. 2.

² Hart, *The American Nation—A History*, Vol. 22, pp. 281 et seq.

other directions. Railroads began to be searchingly investigated. It was time attention was directed toward the railroads and their relation to special influence in government. "The progress of the construction of railroads in the United States was comparatively slow until assistance was granted by Congress. This was given under the form of donations of the public lands, for the first time, in 1850."¹ The first of these grants of land was made to the Illinois Central, and embraced 2,595,053 acres. Between 1850 and 1870 the total area granted to roads through the various states exceeded 60,000,000 acres. In addition to these grants, extensive grants were made later to the three Pacific railroads. These latter amounted to 135,000,000 acres or about 200,000 square miles.

The mania for building railroads and granting lands abated somewhat about 1875, and people began to direct their attention to the control of the roads already in existence. As far back as 1852 we find a provision in the platform of a minor political party, the Free Soil Democrats, "that the public lands of the United States belong to the people, and should not be sold to individuals nor granted to corporations." These protests continued until finally all the important parties joined in the protest against any further grants. In a convention of the National Association of Transportation and Commerce held in Chicago in 1875, the vice-president of the association in his opening address emphasized the need of inquiring "whether there is less danger in leaving the property and industrial interests of the people thus wholly at the mercy of a few men who recognize no responsibility but to their stockholders and no principle of action but personal and corporate aggrandizement, than in adding somewhat to the power

¹ Appleton's *American Annual Cyclopædia*, 1871, pp. 672 et seq.

and patronage of a government directly responsible to the people, and entirely under their control.”¹ The convention appointed a committee of seven to present their resolution to Congress. The resolution provided generally for national supervision of rates, capitalization, passes, etc.

Meanwhile, the states were taking similar action. In 1879 the State Grange at a meeting held at Montpelier, Vermont, framed and sent a set of resolutions to Congress asking relief from “the giant monopolies.” In 1871 Illinois had passed a law creating the Railroad and Warehouse Commission.² In speaking of the reasons for the appointment of that commission, the governor, in a message to the state legislature, said: “They (the railroads) discriminated against persons and places. Citizens protested against these abuses in vain. The railroad corporations, when threatened with the power of the government, indulged in the language of defiance, and attempted to control legislation to their own advantage. At last, public indignation became excited against them. They did not heed it; they believed that the courts would be their refuge from popular fury.”

The form of control usually adopted by the states was that of a commission to regulate rates and other matters connected with the railroads. The first of these state commissions was appointed in Massachusetts in 1869. Then came the Illinois Commission in 1871. Iowa, Minnesota, and Wisconsin soon followed. The railroads appealed to the highest courts in the states to declare the laws regulating rates unconstitutional. When they were defeated in the states, they carried

¹ Appleton's *American Annual Cyclopædia*, 1875, p. 672. The last part of the statement is very naïve.

² *Ibid.*, 1879, p. 483.

their cases to the United States Supreme Court, only to be again defeated in a famous line of decisions known as the "Granger Cases."¹

State regulation, of necessity, proved ineffectual. Many of the largest and most offensive railroads did business in several states and could not be controlled by state laws or state commissions. An appeal was therefore made to Congress to pass a law providing for a commission similar to the various state commissions to control interstate commerce as the individual states controlled intra-state commerce. In the House of Representatives on January 5, 1881, the bill to establish a board of commissioners of interstate commerce was taken up. The bill apparently had few advocates and many opponents. The activity of the railroad interests was everywhere apparent. Mr. Reagan, representative from Texas, in closing his speech in favor of federal control, but not in favor of a commission, said: "I know, sir, in all preceding discussion here in this House, in our committee, in the committee of the Senate, the lawyers and managers of railroads have attempted to confuse this subject by saying that members of Congress, by their vocation, were not qualified to regulate railroad traffic. . . . They have said that none can do it but experts. God deliver this country if its interests are placed in the hands of railroad experts, in the interest of railroad companies, under the dictation of railroad officers!"² The account of the debate in Congress closes with the significant words, "Subsequently, on March 1st, the House refused further to consider the bill."³

In the first session of the Forty-ninth Congress,

¹ 94 U. S., pp. 113 *et seq.*

² Appleton's *American Annual Cyclopædia*, 1881, p. 176.

³ *Ibid.*

which convened Monday, Dec. 7, 1885, as usual, a bill to regulate interstate commerce came up, and as usual no final action was taken.¹ The next year, however the opposition had to yield. A bill providing for an Interstate Commerce Commission to control common carriers engaged in interstate commerce passed through Congress in that year. The act has since been substantially amended and made more effective, but even then it was a great step in advance. It is significant that among those who opposed the measure to the very end were Senator Aldrich of Rhode Island, Senator Ewart of New York, and Senator Hoar of Massachusetts.²

The passage of the Interstate Commerce Act and the appointment of the Interstate Commerce Commission marked the end of the first period of the attacks of the people upon the railroads as the chief source of organized corruption. An investigation into the railroad had revealed startling causes of their corruption and malpractices and showed that they were at least as much sinned against as sinning. The gigantic industrial corporations, of which the Standard Oil Company was the first to occupy a conspicuous place, had in many instances forced the railroads to discriminate in their favor. A company like the Standard Oil Company could easily exact any favors. Backed by its powerful interests, it could say to a recalcitrant railroad, "You must carry our oil on our terms if you carry it at all. And if you do not wish to carry it, we will build a railroad or a pipe line of our own and run you out of business." And, in some instances, they made good their threat. Too often, however, the railroads yielded to their demands and the most shameful discrimination resulted. The cry against trusts and monopolies had long

¹ Appleton's *American Annual Cyclopædia*, 1886, p. 264.

² *Ibid.*, 1887, p. 177. For provisions of this act, *ibid.*, p. 173.

since been raised. They were denounced in some of the early state constitutions. But the idea that the government should oversee industrial corporations and direct their affairs was repugnant to the minds of a people who favored as little government as possible. It was therefore not strange that Congress did not pass until 1890 a law forbidding combinations in restraint of trade.

While the people were engaged in the search for corruption and its sources, the need of governmental interference to relieve social conditions became more and more pressing. In order to pass laws of this kind, the people had found it necessary to find and remove the corrupt influences which had so vigorously opposed any meliorative measures. They now found it necessary, in order to keep out this corrupt influence and at the same time to make the government more responsive to their demands, to modify it in many important particulars. These modifications of the machinery of government constitute the second of the three phases of the progressive movement.

The point at which the government was most vulnerable under the attacks of special interests was in the elections known as the primaries. The primary elections, strangely enough, have always been considered secondary. They were, for a long time, uncontrolled by law. Some agency had to control them, and the extra-legal agency, the political party, acting through the political boss, with astonishing unanimity, undertook the task which had been unprovided for by the law. These primary elections determined who was to control the party, who were to be the candidates at the various conventions which nominated members in favor. To the easiest and least expensive method of controlling special interests the government was to control the primaries has been sug-

the primaries. That man could control the selection of delegates; and, by consequence, the delegates them a bit selves. The delegates controlled the nominations and usually therefore the nominees. The nominees—the governor and the legislators, the judges—controlled the government in Indiana.

If the corrupting interests failed to dominate the primaries; if candidates, by some miracle, were nominated who were known to oppose them, the next step was to prevent the election of these candidates. The ways of accomplishing this result were many. If necessary, the men could be bought to vote against the dangerous candidate. But such extremes were not always necessary. The newspapers could be induced to print scurrilous attacks upon the integrity of the candidate. His past record could be interpreted in a malign way. His character could, in general, be discredited in the minds of people too little informed to know the real merits of the candidate and too busy to care.

But if the candidate, in spite of all his opponents, could contrive, succeeded in winning, the special interests might be supposed to be at the end of their ropes. Far from it. The next step was to prevent any law injurious to their welfare from passing through the legislature. As the student of American government knows, practically all important measures are referred to committees to be discussed and reported. To corrupt some member of the committee, to induce the committee by specious arguments advanced by well-trained lawyers, to "kill the bill" by not reporting it, was not always impossible. If the committee and their demagogue proved intractable and impervious to suggestion, the governor might be induced to see the bill through in the wrong light. Unfortunately, not even our best legislatures have been wholly free from suspicion. In the accident the special interests lost in the

¹ Appleton's *American*

² *Ibid.*, 1887, p. 1.

primaries, in the elections, in the legislature, and in the governor's office, there still remained the courts. Under our peculiar system of government, courts have the power to declare laws unconstitutional. The state courts are first appealed to. If, after long litigation, they decide against the special interests, the case may, if the federal constitution is involved, be taken to the federal courts. The constitution of the United States has been twisted, mutilated, rendered almost absurd in some instances, to allow special interests to appeal from state to federal courts. The fourteenth amendment, an amendment primarily concerned with the negro problem, has under the powerful alchemy of the well-paid corporation and railroad lawyers, been transformed into a bulwark of the corporations.

Special interests, then, have seized the government at these different points, and reformers before they can enact laws in the interests of the people must strengthen the government at these points. To wrest government from the hands of the bosses and corrupt interests and keep it free, it is proposed to use direct primaries, a system which allows the people directly to nominate their candidates for office. To diminish the power of the special interests to defeat a good candidate, corrupt practices acts are being passed. In some states an attempt is being made to control the newspapers by requiring them to mark as advertising any political matter which they print for money, together with the source of the material. It has been proposed to compel the newspapers to publish any article which is of vital interest to a reasonably large portion of the population. Under some plans, the state itself enables the candidate to print at public expense arguments in his favor. To abolish the domination of the legislature by special interests, reform in legislative procedure has been sug-

gested; and better still, in many states, the people themselves, whether the legislature wills it or not, are being given the power to pass laws which they desire and to reject those which they do not. The governmental device which gives the people the right to pass laws over the head of the legislature is called the initiative; the device which enables them to reject laws is known as the referendum. If the legislators continue to display too great apathy toward the interests of the people and too great predilection for the special interests, a device known as the recall is used to expel the legislators. The recall may be used also to remove from office any executive officials who are tainted through too close contact with the privilege-seeking class; to control unfaithful judges; and, perhaps even more important, to reverse judicial decisions that declare a law unconstitutional. With these and other similar measures in effective operation, a great step will have been taken toward removing permanently organized corrupt influence from government and toward making the machinery of government more responsive to the people.

The third and last phase of the movement has to do with the extension of the functions of government—city, state, and national—to relieve, as far as possible, the distress caused by social and economic conditions. Many persons think that the progressive movement proposes to usher in the millennium by legislation. Nothing could be farther from the minds of the men and women who call themselves progressive. What they do propose to do is to bring the United States abreast of Germany and other European countries in the matter of remedial legislation. They propose to regulate the employment of women and children in factories; to impose a maximum number of hours of work a day for men under certain conditions; to provide for workmen in

their old age and for their widows and orphans when their support is taken from them; to reduce or remove the tariff and substitute in its stead a system of taxation which will fall most heavily on those best able to bear it; to adopt a minimum wage law to strengthen the needy against temptation; to strike at poverty, crime, and disease; to do everything that government can do to make our country better, nobler, purer, and life more worth living.

CHAPTER II

THE PROGRESSIVE MOVEMENT IN THE DEMOCRATIC PARTY

THE progressive movement in the Democratic party began as a well-designed and well-intentioned attempt to prevent special interests from continuing to use the national government for their own selfish purposes. It was well-designed because it aimed to array and in a measure did array, for the first time, laborers against capitalists, employed against employers, the poor against the rich, on the specific proposition that silver should not be demonetized because it would result to the advantage of capitalists and bankers and to the disadvantage of laborers and farmers. It was well-intentioned because Bryan and his followers sincerely and honestly believed that the advocates of monometalism wished to enrich themselves with the aid of government at the expense of the masses and that the first steps in restoring government to the people was to provide a monetary system that would supply credit and currency to all on equal terms. Although the progressive movement began in the Democratic party over the money question, its significance was far deeper than that. If the issue of monometalism and free silver had never arisen, the movement undoubtedly would have started over any one of a hundred other issues such as railroads, corporations, etc., all centering around the one great issue

that government is to be used, not for the few, but for the many. Because of the silver issue, it came in the Democratic party earlier than it otherwise would, since free silver was a cry which rallied many poorly organized, conflicting parties and associations; and because of the free silver issue the success of the movement in the party came later than it otherwise would, since, when the free silver propaganda was rejected, not only that issue, but all issues for which the progressive elements stood were discredited for a long time.

For the purpose of this discussion the development of the progressive movement in the Democratic party may be divided into three periods, with the year 1893 marking the end of the first and the year 1912 the end of the second. The first period may fitly be called a period of preparation, since during the period from the Civil War to 1893 the forces of discontent and protest that were later to furnish strength to the progressive Democrats were forming and finding themselves, and in that same period the question of free silver, on which these forces were to unite, was becoming more and more acute.

One of the first of these forces of protest and revolt that later joined the progressive Democrats, appeared in 1868 under the name of the Greenback party. The men in this party believed that much of the distress of the country was caused by stringency of the currency and advocated the continuance in use of the "greenbacks" that had come into existence during the war. Failing to get a hearing for their ideas with either of the two older parties, the advocates of the "greenbacks" formed a party of their own and held a national convention in 1876. In its platform the party stated that "a United States note, issued directly by the government, and convertible on demand into United States obligations, bearing a rate of

interest not exceeding one cent a day on each one hundred dollars, and exchangeable for United States notes at par, will afford the best circulating medium ever devised.”¹ Although the Greenback party had no subsequent history, it is important because it was the predecessor of the Populist party which united with the Democrats in support of Bryan and free silver in 1896.

Another protest against existing conditions came in 1872, when the Labor Reform party was organized. “The convention of the new party,” says Wilson,² “had been made up chiefly of trades union bosses and political free lances, but it had brought delegates together out of seventeen states and was an unmistakable sign of the times. The workingmen of the country were about to bestir themselves to make their power felt in the choices of government and law.”

By 1884 monopolies had attracted such general and widespread attention that a party, calling itself the Anti-Monopoly party, was organized. This party proposed that “corporations, the creatures of law, should be controlled by law;” that “it is the duty of government to immediately exercise its constitutional prerogative to regulate commerce between the states;” and that “bureaus of labor statistics should be established, both state and national.” The platform demanded further an eight-hour day and an income tax.

In 1888 the voices of protest were heard on every hand. Three new parties, the Union Labor party, the United Labor party, and the American party, arose to denounce corruption and fight for enlightened government. In its platform the United Labor party characterized the Democratic and Republican parties as “hopelessly and shamefully corrupt, and by reason of their

¹ Stanwood, *History of the Presidency*, p. 367.

² *History of American People*, Vol. V, p. 123.

affiliations with monopolies equally unworthy of the suffrages of those who do not live upon public plunder. . . ."¹

Through all the grumbling and discontent voiced by these minor political organizations that arose during the twenty-five year period following the Civil War there ran, now indistinct, now more pronounced, like a motif, the discussion concerning free silver. In 1893 with the repeal of the famous Sherman Silver Purchase Act passed in 1890, it became the major motif in the political agitation that was then rife, harmonizing Populists, Farmers' Alliances, Democrats, Silver Republicans, and others, until, in 1896, after Bryan's stirring coda in the Chicago convention, it was dismissed as a leading issue from our political life.

From the very beginning of our history, the place that silver should occupy in the currency had been a perplexing question. This was so because Congress attempted by legislative enactment to fix permanently a ratio between gold and silver which the operation of economic law caused frequently to change. The important legislation on the subject was passed in 1792, 1834, 1853, 1873, 1878, 1890, and 1893. Of these acts, the first four attempted to fix the legal ratio between gold and silver so as to make it conform to the market ratio. The last three were passed "to do something for silver," when, after repeated attempts, it had been found impracticable to maintain it in a dual system in a constant ratio to gold.

A brief summary of these acts will give the broad outlines of the history of the silver question and will make clear why free silver held so prominent a place in the campaign of 1896.

The act of 1792 adopted the arbitrary ratio of 15 to

¹ McKee, *National Conventions and Platforms*, p. 254.

1 between silver and gold. There is no evidence that Hamilton, who advocated and was responsible for this ratio, adopted it because it was the same as the market ratio between the two metals. In fact, there is some evidence that he paid no attention to the market ratio. It happened, however, that Hamilton's ratio and the market ratio were about the same. Between 1792 and 1834, however, the market ratio had changed from 15 to 1 to 15.7 to 1, silver becoming cheaper. Under the operation of Gresham's law, gold was practically driven from the country because men found it profitable to use an ounce of gold to buy 15.7 ounces of silver and then take only 15 ounces to the mint and obtain the equivalent of the original ounce of gold.

The law of 1834 attempted to change this condition by raising the ratio from 15 to 1 to 16 to 1. This act carried the pendulum too far in the other direction. The market ratio was now only 15.7 to 1, while the mint, or legal, ratio was 16 to 1. Gold was now the cheaper metal and under Gresham's law tended to drive silver from the country. Just as between 1792 and 1834, it had been profitable to use gold bullion to buy silver to be coined, so now it became advantageous to use silver as bullion to buy gold to be coined.

The act of 1853 did not attempt to change the ratio in aid of silver. The framers recognized that it was impossible to fix any ratio that would prevent one metal from driving the other from the country. Gold had driven out silver as currency, and it was decided, without openly announcing the fact, to recognize gold as the standard and to use silver for subsidiary coins. Consequently, the act merely made some changes in the value of minor coins, the method of their coinage, and the amount that would be received as legal tender.

The next legislation came in 1873. The act passed

then did little more than openly recognize a situation that had existed since 1853 and that had been tacitly accepted in that year; i. e., that bimetallism was impracticable and that of the two metals, gold and silver, gold should be the standard. But, because silver was openly demonetized, the silver men denounced the act in the bitterest terms. They called it the "crime of '73," and saw in it a deliberate attempt on the part of the Eastern bankers to compel, with the aid of government and law, the debtors of the country to pay on a gold basis what they had borrowed on a gold and silver basis. Gold, they contended, because of its scarcity, would be more valuable and therefore purchase more. That meant that farmers would receive less for their products and that they would have to pay more on their debts.

In 1878, as a result of the insistent demands of the silver men that silver be restored to "the place in the currency that it had formerly occupied," Congress passed the Bland-Allison Act, a weak compromise measure that only made matters worse. The act made standard silver dollars legal tender, and provided that the Secretary of the Treasury "purchase, from time to time, silver bullion, at the market price thereof, not less than two million dollars' worth per month, nor more than four million dollars' worth per month, and cause the same to be coined monthly, as fast as so purchased, into such dollars. . . ." ¹ The Bland-Allison Act of 1878 satisfied nobody. It was unsatisfactory to the advocates of a single gold standard because it flirted with silver by providing for the purchase of it whether it was needed or not. It was equally unsatisfactory to the free silver men because it accepted silver as an inferior metal and provided for the purchase of a certain

¹ Macdonald, *Select Statutes of United States History, 1861-1898*, p. 314.

amount as a sop to Cerberus. It was certain that more legislation would soon have to be enacted.

In 1890 the famous Sherman Silver Purchase Act was passed. This act, like that passed in 1878, directed the Secretary of the Treasury to buy a certain quantity of silver, but changed the quantity; instead of from two to four million dollars' worth, the act authorized the purchase of four and a half million *ounces*. The friends of silver saw in this new law another move against silver, and bent all their energies to have it repealed and another law passed restoring bimetallism. In 1893 the Sherman Act was repealed, and no substitute was enacted to take its place. The issue which both parties had been evading since 1873 could no longer be evaded. The period of preparation was over; the progressive movement in the Democratic party had begun.¹

The second period in the history of the progressive movement in the Democratic party—the period of development—began in 1893 and ended with the election of Wilson in 1912. As soon as the Sherman Act was repealed in 1893, Bryan and his followers made plans to capture the Democratic party and name their own candidate in 1896. They were aided in this attempt

¹ In a letter to the author, Bryan says:

“The progressive movement began in the Democratic party in 1893. The Populist party was the first indication of a growing dissatisfaction with existing conditions. . . .

“The conditional repeal of the Sherman Law was the chief cause of the reaction in the Democratic party against Wall Street influences. That occurred in the fall of 1893. The Democratic party suffered an overwhelming defeat in 1894, and began to organize in the spring of 1895 for the campaign of '96. The money question was the surface question, but it was not really the fundamental issue. The real question was whether the Democratic party should be controlled by those who found their inspiration in Wall Street and followed the advice of the Wall Street organs, or by the representation of the masses—whether it should stand for remedial legislation.”

by the fact that Cleveland, who was then President, was already ending his second term, and for that reason alone was not likely to be renominated. Moreover, the country (in 1893 had been visited by a severe panic, which closed factories and mills, threw thousands out of employment and accentuated poverty and distress. The panic was attributed partly to the tinkering with the tariff and partly to the inadequacy of the currency system. At all events, Cleveland and his wing of the Democratic party were discredited with the public, and a Democratic defeat in 1896 seemed inevitable. While the conservative Democrats could promise little or no popular support for their platform and candidates, Bryan had reason to believe that the resources of the Populist party, the Farmers' Alliance, and other similar organizations would be with him.

After a bitter fight in the convention, Bryan was nominated and free silver declared the paramount question. The People's or Populist party and the National Silver party both indorsed the Democratic nominee. The Republicans, after a stormy convention, from which Senator Teller of Colorado and other prominent advocates of bimetallism withdrew, declared in favor of the gold standard and nominated McKinley for President. The campaign that followed was one of the most hotly contested since the Civil War. This was partly because then, for the first time since the war, the campaign was fought over a definite issue, and partly because an appeal was made to classes and sections as such, thus resulting in a measure of class hatred and sectional rivalry.

The campaign was, in many respects, a remarkable one. Bryan transformed by the magic of his personality and oratory a lifeless party, almost resigned to de-

feat, into an active, vitalized army of enthusiasts that almost won the election.

"In some respects the result was the greatest trial of the temper of the defeated party the country has ever known. The aims of the Democratic party were—not to use the phrase offensively,—in a certain sense revolutionary. They were intended to array the weak, the poor, the debtors, the employed, against the men who were designated as plutocrats. . . . The fact that, when the American people had spoken at the polls upon questions that involved the highest interests of society, the decision was quietly accepted as conclusive until a new occasion should arise for passing upon them in the orderly American way, is most creditable to them, and a happy augury for the future."¹

Bryan's defeat in 1896 was a serious blow to himself and to the progressive movement in the Democratic party with which he was so closely identified. The loss of a presidential election; the great increase in the amount of gold produced,² raising prices and meeting other needs which Bryan had expected free silver and bimetallism to meet; the rejection of the principle of bimetallism; the revulsion of feeling that followed a campaign in which the appeal had been so largely to class hatred—all tended to discredit Bryan. Not only did they discredit Bryan, but they tended to discredit, for a time at least, most of the other principles for which Bryan stood. Direct legislation, control of corporations,

¹ Stanwood, *History of the Presidency*, p. 569.

² From 1891-1895, the annual average production of gold was \$162,947,000. The following table shows the rapid increase in production in the years immediately succeeding:

1896	\$202,251,600
1897	238,812,000
1898	287,428,600
1899	306,584,900

—White, *Money and Banking* (4th ed.), p. 53.

the income tax and many other excellent measures all had to walk the plank with free silver. Moreover, the very weakness of the party made it weaker. Corporations, on which political parties depend so largely for their support, like to give their money where it will count. To give it to a party that has little or no chance of coming into power, and therefore little or no chance of helping corporations, would be a waste of money, and corporations do not like to waste money.

The campaign of 1900 presented three main issues: the corporations, the Philippines, and the money question. On the money question, Bryan and his party were discredited largely because the discovery and production of large quantities of gold between 1896 and 1900 brought about the results that Bryan expected free silver and bimetallism to effect. The great majority of the people accepted the gold standard and were unwilling to reopen the question. The corporations, however, were becoming more and more an issue, and both parties tried to make political capital out of attacks—real or feigned—upon them. It was too early, though, for drastic or radical action tending to restrain corporations, to win approval. Many people believed that in some way the corporations were responsible for the era of unprecedented prosperity that came with McKinley's administration and therefore were unwilling to do anything that might cripple them. On the Philippine issue the Democrats took the unpopular stand that the islands should be given their independence at once. The party was unwilling to commit itself to a necessary expansion of the country's interests and possessions, and failed to realize that the United States had become a world empire. Standing as it did on these three issues, it was inevitable that the Democratic party should go down to defeat again in 1900.

By 1904, however, the prospects seemed brighter. The party had succeeded in eliminating Bryan as a candidate and was making successful overtures to the corporations for support. This support—so necessary in national campaigns—was given the more readily when the Democrats nominated for President a man of proved conservatism and friendliness toward corporate interests, Alton B. Parker. An added reason why the corporations generally felt disposed to support the Democrats was because the Republicans had nominated Roosevelt, who, in the three years of McKinley's term which he had filled out, had given evidence of a determination to free the national government from the domination of special interests.

With the people, however, and with some of the corporations, Roosevelt found high favor. His strong personality, his vigorous utterances, his many-sided life appealed to the masses of the people and did much to break down party lines. Much of Roosevelt's success in 1904, moreover, by a paradox familiar in American politics, was due to the aid of the corporations and at the same time to Roosevelt's attacks upon them. The people, who now began to realize the need of controlling the trusts, supported Roosevelt because he attacked them openly and fearlessly; the corporations supported Roosevelt because they considered his talk the usual campaign bombast and *because they knew that however much Roosevelt wished to control them, Congress could be relied upon successfully to resist him.*

The Democratic party in 1908 was in no condition to offer effective opposition to its opponents. In the first place, it had no issues. The Democrats tried to throw the responsibility for the panic of 1907 upon Roosevelt, but the country at large believed that the causes of the financial disorder lay in our currency

and banking system, and in economic laws over which the President had no control. When the Democrats used the tariff as an issue, they were met with the promise of the Republican party to revise the tariff downward. When they asked for greater control over industrial corporations, the Republicans did likewise. In the second place, the Democrats again nominated Bryan, who, while he could count upon the unfailing support of his own wing of the party, was distrusted by the majority of the voters, who could not forget free silver and 1896. To oppose Bryan, the Republicans presented Taft, whose training as judge of the United States Circuit Court, Governor of the Philippines and Secretary of War seemed to fit him preëminently for the presidency, and who in addition had the support of the retiring President, Roosevelt. The campaign was not one of issues, but one of men, with the odds decidedly against the Democrats.

It became evident soon after Taft was elected President that special interests had regained the complete control of the government which had been interrupted during Roosevelt's administration. To the Democrats, this brought renewed hopes, for the country was determined to shake off from government the influence of special privilege and, if it could not accomplish this result through the Republican party, it would turn to the Democrats. Another reassuring sign of victory in 1912 was the dissension among the Republicans, many of whom had followed Roosevelt and were disappointed because Taft failed to carry out the former's policies. As time went on, a break between the conservative Republicans and the "insurgents" seemed inevitable.

While the conservative forces were regaining control of the Republican party under Taft, the progressive

element in the Democratic party, which had been temporarily suppressed in 1904, was coming back into power. In 1910 thirty-five progressive Democrats formulated a constitution and organized a Democratic Federation. The object of the Federation was "to place in power the Democratic party organization, pledged to complete the reestablishment of a people's-rule system of government in city, state and nation, along with revision of the tariff and other needed reforms."¹

Meanwhile the progressive Democrats were making their influence felt in several of the states. Oklahoma, which had been admitted to the Union under Roosevelt's administration, had adopted a radical constitution and sent to the Senate Owen, who became one of the leaders of the progressive contingent there. In 1910 Congress passed a bill authorizing Arizona to prepare a constitution preparatory to admission as a state. The constitution which was prepared was radical in the extreme, providing among other things for the initiative, referendum, and recall. Under the bill passed by Congress, the approval of the constitution by the President was necessary. President Taft refused to approve the constitution, objecting especially to the recall of judges, concerning which he wrote an effective veto message. The provision of the constitution was therefore withdrawn, only to be restored when Arizona had been admitted.

Of all the states, however, New Jersey was destined to contribute most to the cause of the progressive movement in the Democratic party, because it was in that state that the leader of progressive Democracy triumphant received his training in practical politics. In 1910 the Democratic leaders in New Jersey, being sadly in need of a victory and hoping to win it by placing at

¹ Sixty-first Congress, second session. Senate Doc. No. 649, p. 12.

the head of the ticket a man who would command the respect of the people, nominated as governor Woodrow Wilson, for many years president of Princeton University. In making this choice the politicians who controlled the Democratic party probably believed that they had secured a candidate who, because of his scholarship and high civic ideals, would be a good vote-getter; but who, after election, because of his lack of experience in practical politics, would be easily controlled by the machine. The politicians were right in their first conjecture. Wilson carried the state for the Democrats. But they were grievously mistaken in the second. Never did a quiet scholar prove so unmanageable.

The first break between Wilson and the bosses came when Smith, a political boss, announced himself as candidate for the United States Senate, although in the primaries the people had given a preferential vote for Martine. Wilson held that, while the primaries were not legally binding upon the members of the state legislature, there was, nevertheless, a moral obligation to vote for the candidate on whom a plurality of the voters had fixed their choice. Smith accepted the challenge thrown down by Wilson, and the struggle began. Wilson interviewed individual legislators, exacting from them a promise to vote for Martine; in the case of recalcitrants he threatened to appeal to their constituents; and, in several instances, by campaigns in various parts of the state, he succeeded in arousing public opinion. As a result of his efforts, the bosses were beaten and Martine was elected.

After this preliminary skirmish ¹ with the special interests had resulted in a crushing defeat for them, Wilson set about to put through the legislature a long pro-

¹ The greater part of the campaign for Martine and against Smith was waged before Wilson was inaugurated as governor.

gram of progressive laws. Among the most progressive measures included in this program were an employers' liability act,¹ a direct primary law,² a corrupt practice act,³ and a public utilities law.⁴

Wilson's success in ousting the strongly entrenched bosses from power in New Jersey, followed by the enactment of so many progressive laws, attracted the attention of the entire nation. Before long Wilson was talked of as a presidential possibility in 1912. Wilson himself was not slow to take advantage of the popular sentiment in his favor and spent a good deal of his time while governor traveling over the country, making addresses and meeting people.

As 1912 drew near, it became apparent that the important Democratic candidates would be Clark, Wilson, Underwood, and Harmon. Of these, Clark promised to be the strongest. Since 1910 he had presided effectively as Speaker of the House; he had been minority leader when the Republicans were in power; and because of his personal popularity was considered a good vote-getter. Next to Clark, Wilson, because of his work in New Jersey, seemed the most likely candidate. Underwood had done hard work in the House as chairman of the Ways and Means Committee in preparing a revision of the tariff, but he was a Southerner and there was some suspicion that he was not unfavorably disposed toward corporate interests. Harmon, the least likely of the candidates, had made a creditable record as governor of Ohio, but even more than Underwood was thought to be in close alliance with corporations.

In the primary elections, the chief struggle was be-

¹Laws of 1911, C. 95.

²*Ibid.*, C. 183.

³*Ibid.*, C. 188.

⁴*Ibid.*, C. 195.

tween Wilson and Clark; and, singularly enough, in most instances Clark won. This was due partly to the fact that Wilson was unknown to many, but more especially, perhaps, to the fact that a great many progressives who might have been counted on to support Wilson against Taft rushed to the support of Roosevelt in his struggle to obtain the nomination in the Republican primaries. It is quite likely that many who voted for Roosevelt in the primaries changed their allegiance to Wilson when Taft was made the nominee of the Republican party.

The great outstanding issue in the 1912 campaign was the same as it had been in the 1896 campaign, Who shall rule, a majority of the voters or the special interests of a minority? Both the Democratic and Republican parties were divided within themselves on that issue, the insurgent Republicans and the progressive Democrats standing for the same principles. In each case it was a fight to capture a party. Among the leading progressives of the two parties it was tacitly understood that the Democrats would try to nominate Wilson and the Republicans La Follette. If both were nominated, the progressives would support the nominee of their respective parties. If only one were nominated, that one was to receive the support of the progressive elements in both parties. And in case neither was nominated, they would consider making a bolt and establishing a third party.

The Republican convention met in Chicago in June. There was a short, sharp struggle between the delegates sent there by the special interests and those that represented the people. And the invisible government, the government of the minority, won. Taft was nominated, Roosevelt bolted, and in the agony of defeat a new party was born.

The Democratic convention was held in Baltimore just a short time later. The same private interests that had dominated the convention at Chicago were in Baltimore, determined to capture another party and insure themselves against possible defeat. The whole country watched the outcome of this second struggle between privilege and democracy. With the Republican party rent wide open, the Democratic party seemed sure to win. The interests knew it. Bryan, the leader of the progressive forces of the Democratic party, knew it.

The first victory went to the conservatives. Alton B. Parker, acceptable to the corporations, was elected temporary chairman in spite of the protests of the progressives and in spite of the fact that Bryan was the opposing candidate. The progressives, however, gained an important point when they induced the convention to vote against the unit rule in states which had, by mandatory statutes, provided for the nomination and election of delegates under direct primaries. Bryan then met the issue of special interests and corporation influence squarely. He introduced a resolution the purpose of which was to put the convention on record as opposed to the nomination of any candidate for President "who is the representative of, or under obligations to, J. Pierpont Morgan, Thomas F. Ryan, August Belmont, or any other member of the privilege-hunting and favor-seeking class. . . ." ¹

On the first ballot for the presidential nomination, Clark was far ahead, receiving 440½ votes to 324 for Wilson, 148 for Harmon, 117½ for Underwood, 31 for Marshall, 22 for Baldwin, two for Sulzer, and one for Bryan. There was practically no change in the voting until the tenth ballot was reached. On that ballot, the New York delegation, headed by Charles F. Murphy,

¹ *American Year Book*, 1912, p. 17.

the leader of Tammany Hall, changed from Harmon to Clark, giving Clark thereby a majority of the votes, but not a sufficient number to nominate him. As ballot after ballot was taken, the Wilson forces remained firm, receiving encouragement and support from the press and public opinion. The beginning of victory came to Wilson on the fourteenth ballot, when Bryan announced that he could no longer support Clark for President, since the New York delegation had given its support to him. Although there was no immediate change after Bryan had taken this action, it nevertheless disheartened Clark and his adherents and made their ultimate defeat certain. On the forty-sixth ballot, the Clark forces, realizing the uselessness of contending further, gave up the struggle and Wilson was nominated.¹

The campaign that followed was an extraordinary one. Wilson and Roosevelt were both progressive; Taft was an acknowledged reactionary. In spite of the fact that the progressive forces were thus split into two factions, Wilson was elected by a safe plurality. The significance of the 1912 campaign is not that the country went Democratic; for it did not. Roosevelt and Taft together received 1,316,917 more votes than Wilson. But the country for the first time had gone progressive, because the votes cast for Wilson and Roosevelt exceeded by almost seven millions those cast for Taft. For the first time, the people of the nation recognized that a select minority, and not they, had previously controlled government; and for the first time they voted consciously and deliberately to restore the government,

¹ The wisdom of the rule that obtains in Democratic conventions that a candidate must receive two-thirds of the votes of the delegates is here shown. If a majority had been sufficient, Clark would have been nominated on the tenth ballot and the minority might have bolted, thus destroying the party.

misused and perverted, as it had been, to the control and use of the people.

After a long period of preparation, followed by twenty years of development, the Democratic party as an instrument of progressivism is now entering upon a period of achievement. Already a Democratic Congress has revised the tariff, passed a currency law, and provided for additional regulation of trusts and monopolies. The President and Congress have put through a long program of progressive legislation. But it is doubtful whether the Democratic party as it is at present constituted can carry out the full progressive program. It may take the first step; by reducing the tariff, enacting a presidential preference primary law, a currency law, and a law providing for greater control over corporations, it may do something to take government from the power of special interests. But unless it changes its traditional position it cannot go far in using government to relieve economic and social distress. The Democratic party has always been the conservative party, it has always gone into power as the conservative party. It was returned to power in 1912 not because it was radical, but because Roosevelt and his party were more radical. Then there is further the problem of the Solid South. So long as men in the South are chosen for their color rather than their political creed, so long as a man may oppose a reduced tariff, income tax, control of corporations, and every other progressive measure and still be elected on the Democratic ticket to the United States Senate or the House of Representatives solely because of his stand on the negro problem, so long will there be potential dissension in the Democratic party and inability to agree permanently on a fundamental program.

To the Democratic party this credit must be given.

It was the first of the two old parties to conduct a national campaign on the issue that government should be free; and, after sixteen years of endeavor, it was the first party to succeed in winning a national election on that issue. Bryan's fundamental proposition in Baltimore in 1912 was identical with that in Chicago in 1896. He was fighting old foes with new faces. And, although it is true that Bryan's success and the success of the Democrats in 1912 were due in large measure to the dissensions in the ranks of the Republicans, it is nevertheless true that the fundamental ideals of government for which Bryan and his wing of Democracy stood in 1896 had at last been accepted by the country and that the reactionaries and children of special privilege had, for a time at least, been put to utter rout.

CHAPTER III

THE PROGRESSIVE MOVEMENT IN THE REPUBLICAN PARTY

THE progressive movement in the Democratic party, as we have seen, emphasized the need of freeing government from the domination of special interests. At the start, the leaders of the movement adopted the currency question as the most vital issue on which to oppose special influence and special legislation and bent their efforts to restore silver to its old position in our financial system, believing that the attempt to demonetize silver was an attempt to rule the country in the interests of Wall Street and that the preservation of the double standard would aid the prosperity of the masses of the people.

In the Republican party, the progressive movement was fundamentally the same, but manifested itself differently. There, too, the fight was against the control of government by special interests and the prostitution of government to serve the needs of a small minority. But in the Republican party the contest took the form primarily of a struggle against corporations. This struggle had several phases: first, and most important, was the attempt to find some adequate means of controlling and regulating corporate activities; second, and almost as important, was the resistance to the efforts by corporations to exploit the natural resources of the nation in their own behalf; and, finally, came the

revolt against the impudent, open revision of the tariff; in 1909 in the interest of trusts and monopolies.

The feeling that corporations must be controlled was fairly definite and widespread as early as 1890. Justice Harlan, in his dissenting opinion in the famous Standard Oil Case,¹ said: "All who recall the condition of the country in 1890 will remember that there was everywhere, among the people generally, a deep feeling of unrest. The nation had been rid of human slavery—fortunately, as all now feel—but the conviction was universal that the country was in real danger from another kind of slavery sought to be fastened on the American people, namely, the slavery that would result from the aggregations of capital in the hands of a few individuals and corporations controlling, for their own profit and advantage exclusively, the entire business of the country, including the production and sale of the necessities of life. Such a danger was thought to be then imminent, and all felt that it must be met firmly and by such statutory regulations as would adequately protect the people against oppression and wrong."

As a result of this unrest, Congress in 1890 took a step toward controlling corporations by passing what has become known as the Sherman Anti-Trust law.² The first two sections of the act are as follows:

"Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination

¹ 221 U. S., p. 83.

² Anti-Trust Act of July 2, 1890. C. 647, 26 Stat. 209.

or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

“Section 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with another person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.”

In the early cases that came up, the Supreme Court upheld the law and enforced it as it stood.¹ In spite of these decisions, however, such corporations as the Standard Oil Company and the American Tobacco Company continued to monopolize their respective industries and to combine in restraint of trade. There was, moreover, a general feeling that these corporations would continue to combine and restrain trade and that no suit for their dissolution would be brought because of the injurious effect it would have on business. Consequently in 1901, when Roosevelt came into office, few people believed that he would—or could—use the Sherman Law

¹ Of eighteen suits brought by the government under the Sherman Act from the date of its passage down to the beginning of Roosevelt's administration, ten were successful. The most conspicuous failure on the part of the government was in the Knight case, a case that involved the so-called Sugar Trust. See 156 U. S. 1.

effectively to curb the larger and more formidable trusts.

Roosevelt soon confirmed this belief and showed that he regarded the Sherman Law as a doubtful remedy. Roosevelt's chief objection to the law was its lack of discrimination. It assumed that all combinations were trusts, all monopolies were dangerous and should be suppressed. Roosevelt drew and emphasized the distinction between good corporations and bad corporations and pointed out that a monopoly was not objectionable merely because it was a monopoly, nor a business bad because it was big. Appreciating the need of some effective means of curbing the power of the great industrial corporations and realizing the inadequacy of the only means then at hand, i. e., the Sherman Anti-Trust Law of 1890, Roosevelt induced Congress in 1903 to establish a Bureau of Corporations as part of the Department of Commerce and Labor created at that time. Congress acceded to the President's request and made provision for such a bureau, giving it "power and authority to make . . . diligent investigation into the organization, conduct, and management of the business of any corporation, joint-stock company or corporate combination engaged in commerce among the several states and with foreign nations,"¹ except, of course, corporations already controlled by the Interstate Commerce Commission. The act further provided that "it shall also be the province and duty of said bureau, . . . to gather, compile, publish and supply useful information concerning corporations."

Under the authority of this act, the Bureau of Corporations made an exhaustive investigation, among others, of two of the most formidable trusts, the Standard

¹ Fifty-seventh Congress, Ses. II, Ch. 552, 1903.

Oil Company¹ and the American Tobacco Company.² The public knew something of the methods of the first of these two organizations through the monumental work of Ida Tarbell; and imagination added to the really startling picture that Miss Tarbell painted. Nevertheless, the reports of the Bureau of Corporations, showing a thoroughness and accuracy that could not be questioned, and coming from an official source, were surprising in the extreme. They showed that these corporations almost completely controlled their respective products, that they had acquired that control by unfair competition and sharp practices, and that they used their advantage to raise prices.

Roosevelt, however, even before the reports of the Bureau of Corporations were completed, determined to use the only available law to meet the situation, the Sherman Anti-Trust law. In November, 1906, suit for dissolution was filed in the federal courts against the Standard Oil Company, and in July, 1907, against the American Tobacco Company. It is probable that the President, in bringing these suits, felt the inadequacy of the Sherman law, and that he shared a rather widespread belief that the anti-trust law was crude, inflexible, and difficult, and that, if applied in all its literalness, it would destroy business prosperity. What he felt was needed was regulation and supervision, and not annihilation.

But, although there was a clear violation of the law by both corporations, the full penalty of the act was never imposed upon either. The punishment of being compelled to dissolve was more apparent than real, and

¹ Report of the Commissioner of Corporations on the Petroleum Industry (Parts I and II), May 20, 1907, and August 5, 1907.

² Report of the Commissioner of Corporations on the Tobacco Industry (Parts I and II), February 25, 1909, and September 25, 1911.

no great damage resulted from its infliction. What seemed to weaken the Sherman Law most in connection with the decisions were the remarks of Chief Justice White to the effect that the Act was aimed at "unreasonable" restraint of trade only. Although these remarks were not necessary to the decision, they were taken to indicate the attitude of the Supreme Court on the point and to mean in substance that the court would use an unusually large amount of discretion in enforcing the law.¹

Roosevelt's efforts to subject corporations to efficient federal control and to eliminate the evils and retain the advantages of business conducted on a large scale were stopped in 1907 by the financial panic of that year.² It was Roosevelt's undoubted intention and desire that his successor, Taft, should carry on the work where he had left off and find the solution of the problem of corporation control. How he was disappointed and deceived is well known.

(The conservation movement—a movement to protect the nation's natural resources from exploitation by a few powerful interests—was a second phase of the fight against corporations and special privilege waged by the progressive forces in the Republican party during Roosevelt's administration.) Conservation, says Gifford Pinchot,³ "stands against the waste of the natural resources which cannot be renewed, such as coal and iron; it stands for the perpetuation of the resources which can be renewed, such as the food-producing soils and the forests; *and most of all it stands for an equal opportunity for every American citizen to get his fair share of benefit from these resources, both now and hereafter.*"⁴

¹ 221 U. S. 1, 106.

² For a fuller discussion of corporations, see Chapter VIII.

³ *The Fight for Conservation*, p. 79.

⁴ The italics are mine.

Although the American Association for the Advancement of Science by a memorial presented in 1873, reinforced by another in 1890, succeeded in having established a forestry bureau in the Department of Agriculture and brought about the first national reserve in 1891; and, although as a result of the publication of a book by Major J. W. Powell entitled "Lands of the Arid Region," the United States Geological Survey was authorized to establish an irrigation division and the Secretary of the Interior was given the right to withdraw from private entry reservoir sites—although due credit must be given to all these agencies, it was Theodore Roosevelt who first made conservation a national issue and warned the people that they must fight to save their heritage of minerals, water, forests, and land.¹

On March 14, 1907, Roosevelt appointed the Interstate Waterways Commission to investigate conservation so far as it concerned the waterways of the country. The commission, after a trip over the country, realizing the magnitude of the whole problem, recommended to the President that he call a conference at Washington to discuss the conservation of natural resources. The President agreed and sent invitations at first to the governors of the states and later to the Vice-President, members of the Cabinet, both Houses of Congress and some leading scientists. The conference was held in the White House May 13, 1908, and considered the whole question of conservation. As a result of the meeting, the National Conservation Commission, with Gifford Pinchot at the head, was established. This commission undertook as its first task to make an inventory of the natural resources of the country. This inventory contained a vast amount of valuable infor-

¹See Van Hise, *Conservation of Natural Resources*.

mation necessary to an intelligent determination of the problems of conservation. The report was approved by a conference of governors and by the President and was later published.

In this fight to protect the natural wealth of the country from private exploitation and waste, Roosevelt received no aid from the majority of the members of Congress. On the contrary, everything possible was done to hamper him. The President asked for an appropriation for the commission. Senator Nelson of Minnesota requested \$25,000 for necessary traveling expenses, room rent, etc. No heed was paid to either. Congress ignored the President's demand and Senator Hale killed Nelson's request in committee.

And this was not all. It had been the custom of the Conservation Commission to use as experts men connected with various government bureaus. James A. Tawney of Minnesota introduced and supported a clause in the sundry civil appropriation bill prohibiting these experts from giving any of their time to the work of the commission. With its money and men both cut off, the commission was well-nigh helpless. Moreover, the House committee on printing refused to grant permission to have printed the report of the commission intended for general distribution to show the people what resources were available, their probable life, and what resources had been exhausted.

(While it is true, therefore, that under Roosevelt's administration private interests were checked in their exploitation and wanton destruction of natural resources, it is equally true that Roosevelt was checked in his effort to put the conservation movement on a secure foundation. So far as conservation is concerned, leaving out, of course, the invaluable service in arousing public opinion in this country and in fact all over the

world on the question, the result of the battle between Roosevelt and the special interests on the conservation issue was a deadlock. Roosevelt had not been out of office a year before the interests were back at work in Alaska trying to appropriate the immense national wealth of that territory to their own selfish use.

Before considering the tariff as the third issue on which the fight against special influence was waged, it will be well to trace briefly the rise of that progressive spirit in the Republican party in various states that made possible the revolt against Cannon and Cannonism in 1909-10, when the tariff law was before Congress. Most important among progressive Republican governors were La Follette in Wisconsin, Pingree in Michigan, Cummins in Iowa, Hughes in New York, and Johnson in California. Brief mention should also be made of the political experiments in Oregon.

Of the work of all these men, that of La Follette in Wisconsin contributed most to the progressive movement in the Republican party. As a young man, La Follette had locked horns with the interests, running for district attorney of Dane County against the wishes of the bosses and winning in spite of their opposition. His success in opposing the machine and his efficient administration of the district attorney's office won many friends and made possible his election to Congress. In 1890, owing to peculiar conditions, the Republican party in Wisconsin was defeated and La Follette failed to be returned to Congress. He felt his defeat keenly and retired to private life, taking up his law practice with the intention of remaining out of politics for good.

But circumstances forced him back into the fight. The Republicans who had long held complete control of the government before the Democratic landslide in

1890 had used the office of state treasurer as a most effective means of political graft. It was customary for the state treasurer to deposit the state money in any banks he chose, upon such terms as he could command, and with the understanding that part of the interest was to go to him. In this way the state had been cheated of hundreds of thousands of dollars. The Democrats, wishing to make a record and to embarrass their opponents, brought suits against former state treasurers to recover the money that had been stolen from the state.

The bondsman for most of these former officials was a machine boss of extreme wealth and influence named Sawyer who, when he found himself in danger of losing \$300,000 on his bonds, exerted himself to have the suits called off. The cases were to be tried before Judge Siebecker, La Follette's brother-in-law and former law partner; and, through La Follette, Sawyer hoped to influence the disposition of the actions. According to La Follette, Sawyer offered him a bribe to "fix" Siebecker. La Follette indignantly refused, published an account of the incident, and resolved to make unrelenting war on the system and to free Wisconsin from machine politics.

The story of La Follette's fight for decent government in Wisconsin reads like a novel. Every conceivable influence was used to defeat and ruin him. In the campaign of 1892 he asked the state committee for permission to speak. His request was at first denied, and it was only after he had threatened to speak independently that the committee yielded its consent.

In 1894 he carried on the fight, supporting for the nomination for governor Nils P. Haugen, a progressive of an advanced type. Haugen was beaten. In 1896 and 1898 La Follette ran for the nomination for the

governorship himself and was beaten each time, although he made increasing inroads upon the strength of the machine. Finally in 1900, after a struggle with the bosses and special interests lasting six years, he was nominated and elected governor and began his work of constructive legislation.

The two measures which La Follette wished to put through during the legislative session of 1901 were a direct primary law and a law providing for a fairer taxation of railroads. Because of the activities of the lobbyists, both measures failed. In 1902, however, the fight was renewed and this time was successful. Railroads were forced to bear their full share of taxation; and, as a result, railroad taxes increased more than \$600,000 a year. The direct primary bill, too, was passed at this session, with the provision, however, that it be submitted to a popular referendum ¹ before finally becoming law.

Two other measures of importance were passed: an inheritance tax law and a law governing lobbying. Of these, the more important was the law governing lobbying, growing as it did out of the hard and bitter struggle that La Follette and his followers had waged for years against the unseen government. The law required all lobbyists to register with the secretary of state, giving the names and business of their employers; and further provided that no lobbyist should hold secret communication with legislators or legislative committees.

Having succeeded so well with his first measures, La Follette pressed on with other reforms, including workmen's compensation, income tax, an industrial commission, and a railroad commission with power to fix rates. Of these, the industrial commission and the rail-

¹ At the referendum election, in 1904, the law was adopted by a majority of over 50,000.

road commission are most significant because they were contributions of a unique constructive kind to the progressive thought of the country. The industrial commission—the first of its kind in the country¹—has power to “control and regulate the most difficult questions of sanitation, safety, health and moral well-being which affect the workers of the state. It is one of the most important innovations we have made, one charged with the greatest possibilities for improving the lives of working men and women, and one which should be watched and studied by every one who is interested in forward movements.”² The railroad commission, composed of three members appointed by the governor, has the power to fix rates, control service, and make a complete physical valuation of the railroad property of the state. So scientific and painstaking has the work of the commission been that it has been able at the same time to reduce rates and increase the profits of the railroads. All rate-making was based on three factors: (1) the physical valuation of the railroads; (2) the cost of maintenance; and (3) the cost of operation. So fair was this method in practice that not only the people but the railroads themselves have acknowledged the great benefits the railroad commission has brought to the state.

Another Republican governor who, by his fight against special interests in government, prepared the way for the progressive movement in the Republican party was Hazen S. Pingree of Michigan.³ Pingree, before being elected governor, had been mayor of Detroit, and while in that office attracted widespread attention because of his violent attacks on public utility cor-

¹ La Follette, *Autobiography*, p. 311.

² *Ibid.*, p. 311.

³ For an account of Pingree's work, see *American Law Review*, Vol. XXXIV, pp. 36-50.

porations and his proposal to aid the poor by allowing them to use the vacant lands owned by the city. During his two terms as governor (1897-1900) Pingree advocated a great many measures now classed as progressive. Among them were direct election of United States senators, direct primaries, regulation of lobbying, control of trusts and railways, an eight-hour working day, and others. Pingree's most important work, however, was done in connection with three reforms: regulation of railroad rates; the change in the basis of railroad taxation from specific to *ad valorem*; and municipal ownership of public utilities.

In 1891 the state legislature had passed an amendment to the railroad law, requiring, among other things, that railroads should sell mileage books, good for 1,000 miles, at the rate of \$20 a book in the lower peninsula and \$25 a book in the upper. A man named Smith, having applied for one of these tickets and being refused, appealed to the courts for a mandamus to compel the railroad to sell the mileage book as required by law. The railroad company lost in the state courts; but, later, upon appeal to the federal courts, was successful in having the law declared unconstitutional on the ground that it took away property without due process of law. Pingree, undaunted, himself brought an action against another railroad company, the Michigan Central; but he, too, was unsuccessful in having the law enforced, the court¹ deciding in this case that by its charter the Michigan Central had the right to fix and regulate its charges at a rate not to exceed three cents a mile.

In his attempt to reform the state system of taxation, Pingree met with failure, but this time only temporarily. In a message to the legislature in 1897, the

¹ Attorney-General vs. Pingree, 120 Mich. 550.

governor called attention to the fact that the total valuation of property in the state was \$818,086,160, of which railroad property made up \$316,333,027.90. For the same year the total tax levy was \$20,633,571.04, of which the railroads contributed \$741,408.77,¹ or only about one-tenth of their share. After a hard tussle, the governor secured the passage of a bill providing for a board of three members appointed by the governor to assess the taxable property of railroads within the state, to find the average rate of taxation for state, county and municipal purposes, and to apply that rate to the assessed valuation of railroad property. The supreme court of Michigan in 1899² declared the law unconstitutional on the ground that as an ad valorem tax it should be levied uniformly with other state taxes and not made equal to the average of all taxes, state and local. Nothing daunted, however, Pingree set about to have passed a constitutional amendment that would give the legislature the power to tax the railroads as he proposed. As a result of Pingree's agitation there was passed at an extra session of the legislature in 1900 a joint resolution, providing for the collection of specific taxes from corporations and for the "assessment of the property of corporations at its true cash value by a state board of assessors and for the levying and collecting of taxes thereon."³ This amendment was then presented to the people at the November election, and was carried. In this way, Pingree's second reform, although blocked for a time by the courts, at last succeeded.

The third great reform which Pingree tried to effect

¹ Message of Governor H. S. Pingree to Twenty-ninth Legislature, p. 13.

² 120 Michigan 95.

³ See Constitution of Michigan, Art. XIV, Sec. 10.

was municipal ownership of street railways. The legislature passed a bill creating the Detroit Street Railway Commission, to which was given the power to acquire street railways wholly within the city limits. A short time after the commission had been appointed and had opened negotiations for the purchase of the railways, a case was taken to the courts to determine the validity of the act. The court decided that, inasmuch as the state constitution expressly prohibited the state itself from being "a party to, or interested in, any work of internal improvement," and inasmuch as buying street railways comes under the head of being interested in an internal improvement, the state could not authorize a city to do what it could not do itself.¹

Pingree failed to carry out two of the three great reforms for which he contended, not because of any lack of energy or ability on his part, but because the fundamental law—of the nation in one case and of the state in the other—as interpreted by the highest courts, prohibited the measures which Pingree succeeded in forcing through the legislature. Where it was possible, as in the case of railroad taxation, Pingree met the objections of the court by adding an amendment to the constitution; where that could not be done, there was nothing to do but wait until the fundamental law could be changed or the court induced to modify its interpretation of it. In Pingree's case, as in the case of so many other reformers, progress was made impossible because of a rigid constitution and a conservative court.

Like La Follette and Pingree, Cummins, three times governor of Iowa, and later United States senator, saw clearly the issues of the progressive movement. He saw that the most important question was the relation of corporations to government and he feared, as so many

¹ 120 Michigan 550.

others have feared, that, if the government does not find an effective means of controlling corporations, corporations will inevitably control government. "Wealth," said Cummins in his first inaugural address, "and especially incorporate wealth, has many rights; but it should always be remembered that among them is not the right to vote. Corporations have, and ought to have, many privileges; but among them is not the privilege to sit in political conventions or occupy seats in legislative chambers."¹

In his messages to the legislature, during his three terms as governor, Cummins urged the adoption of a number of reforms, including a state-wide primary law, a law limiting the amount of capital stock issued by corporations, a law prohibiting free passes on railroads, a child labor law, direct inheritance tax, direct election of United States senators, a corporation tax, an employers' liability act, a law prohibiting lobbying, a law giving the railroad commission power to fix rates, a corrupt practices act, and a law limiting the number of hours of continuous work in railway service. Although the legislature did not pass laws on all these subjects, the amount and character of progressive legislation enacted was considerable.² Perhaps the most notable law passed while Cummins was governor was the commission government law for cities, which has become famous everywhere in the country as "the Des Moines Plan."

Governor Hughes properly is classed among progres-

¹ Iowa Documents, 1902, Vol. I., p. 12.

² Among these laws were: Law forbidding corporations to contribute to political campaigns, C. 73, L. of 1907; law limiting hours of continuous service on railways, C. 103, L. of 1907; direct primary law, C. 51, L. of 1907; law regulating capital stock, C. 71, L. of 1907; law prohibiting free passes, C. 112, L. of 1907; law governing child labor, C. 103, L. of 1906; resolution favoring direct election of U. S. senators, Joint Resolution No. 3, 1904.

sive Republican governors because of the three great reforms for which he contended during his two terms in office. These three reforms were: first, provision for a commission to control public utilities in the state; second, the passage of a law prohibiting race-track gambling; and, third, the enactment of a thorough-going direct primary law.

The greatest achievement of Governor Hughes was the passage of the public service commissions law, creating the public service commissions. Under this law the state is divided into two districts, the first including Greater New York, and the second the rest of the state. Each district has a commission composed of five members appointed by the governor with the advice and consent of the senate, the term of office being five years, one commissioner retiring each year. Each commission, within its district, has power to investigate the accounts of railroads and other public utility corporations, prescribe uniform methods of accounting, fix rates, compel better service, pass upon franchises, and in general exercise supervision over the affairs of public utility corporations.

The efficiency of these public service commissions in New York, as in the case of all other commissions, depends largely upon the men chosen by the governors to act as commissioners. The public service commissions law went into effect on July 1, 1907. Although it was intended as a check on corporations and special interests, there is grave suspicion that it is becoming a mere tool in their hands. There is every evidence that in the last few years appointments have been made without any consideration of fitness, but solely as a matter of political preferment.

In his struggle to remove gambling at race tracks, Hughes led one of the bitterest political battles ever

waged in New York State. The forces of evil, corruption, and special influence were arrayed against him almost to a man. Investigations held years later showed that legislators had been bribed with substantial sums to vote against the bill. But in spite of all this opposition, by the narrow margin of one vote—the vote of Senator Foelker, who was carried in from a sick chamber—the bill was passed and race-track gambling was prohibited in the state.

The direct primary bill, known as the Hinman-Green bill, for which Governor Hughes was sponsor, was prepared after a careful study of direct primary legislation in other states and was most thorough. After a persistent fight, however, in which the bosses and special interests of both the Democratic and Republican parties combined against him, Hughes' direct primary bill was beaten. It was a striking illustration of the power of the political machines and awakened thousands in New York to the fact that popular government was in danger.

Hiram W. Johnson of California, because he was largely instrumental in breaking down a political machine and in enacting a large amount of reform legislation, deserves to be ranked among the governors who developed the progressive movement in the Republican party. When Johnson was elected governor in 1910, the Southern Pacific Railroad dominated the political life of California and openly boasted of it. "The following statement issued immediately after the November elections (1910) by Meyer Lissner, Chairman of the Republican State Central Committee, indicates how complete was the anti-machine victory:

"Four years ago the first serious organized effort to take the control of the government of Cali-

fornia from the political bureau of the Southern Pacific Railroad was begun. Those loyal, real Republicans, who initiated that movement, were laughed at for their pains. The railroad had so long been in control, its tentacles were so firmly fastened in every governmental department, state, county and municipal, that it was generally considered invincible.'"¹

The representatives of the Southern Pacific sat in the legislature, in the governor's chair, and on the bench and defied reformers to oust them. It was Johnson who accepted the challenge and successfully performed the task.

Some idea of the extent to which the state was controlled by special interests may be gained by a brief survey of the legislative session of 1909. Although a majority of the senate and assembly favored the passage of reform measures, the machine, by gaining control of the organization of both senate and assembly and placing upon the important committees men who could be depended upon to look out for the special interests, was able to block completely many progressive measures and to mutilate beyond recognition those that did pass. The three principal issues that came before the legislature were the anti-race-track gambling bill, the direct primary bill, and the railway rate regulation bill. By combining forces and steadfastly refusing to yield or compromise, the progressives managed to pass the first of these measures. In the case of the direct primary bill, where two issues were involved, the machine and the progressives divided the victory. The machine fought for a direct primary law that would require a

¹ From Hichborn, *Story of the California Legislature of 1911*, p. 11.

majority or a high plurality to nominate and would throw the nomination into a convention if the majority or high plurality were not obtained. In this way, the machine, by putting a great number of candidates into the field and thus preventing anyone from obtaining the necessary majority or plurality, hoped to defeat the purpose of the direct primary law and retain the convention system. On this first issue, the machine was beaten because it was clearly shown that any law providing for anything other than a mere plurality vote would be unconstitutional. On the second issue, the machine contended for a primary law that would give the voters an opportunity to express a choice for United States senator by districts and not over the entire state and with the understanding that the vote of the people was advisory and not binding. Under this arrangement the machine expected that there would be as many designations for United States senator as there were districts and that ultimately the election would be entirely in the hands of the legislature as under the old system. By clever, cunning tactics, the machine element in the legislature contrived to win out on this second issue.¹ The third great question before the California legislature in 1909 was the question of railway rate regulation. Here again the machine won. What the progressives desired to pass was a law giving to the railroad commission then in existence the right to fix an absolute rate. What the machine wanted when it saw that some legislation was bound to be passed was a law fixing a maximum rate. By concentrating argument upon the constitutionality of the bill fixing an absolute rate and thus confusing the progressives who wanted some kind of regulatory measure, the machine carried its point and the bill that

¹ See Hichborn, *Story of the California Legislature of 1909*, pp. 68-120.

passed gave to the state commission merely the power to fix maximum rates.¹

In his inaugural address, Governor Johnson, mindful of the record of the legislature of 1909 and its predecessors, declared: "The problem first presented to us, therefore, is how best can the government be made responsive to the people alone? Matters of material prosperity and advancement, conservation of resources, development of that which lies within our borders are easy of solution when once the primal question of the people's rule shall have been determined. In some form or other nearly every governmental problem that involves the health, the happiness, or the prosperity of the state has arisen, because some private interest has intervened or has sought for its own gain to exploit either the resources or the politics of the state. I take it, therefore, *that the first duty that is mine to perform is to eliminate every private interest from the government, and to make the public service of the state responsive solely to the people.*"²

Stirred by the earnestness and determination of the governor, the legislature of 1911 set out to pass the laws which the preceding legislature had failed to pass and to perfect those which it had passed in a mutilated form. After the reformers, who were coming more and more to be known as progressives—had organized both the senate and the assembly, so as to give them control of the important committees and therefore of legislation, they proceeded to elect John D. Works, a progressive, United States senator, amended the direct primary law so as to make possible the direct nomination of United States senators by popular, state-wide vote, abolished the

¹ For a discussion of the whole subject, see *ibid.*, pp. 121-144.

² Hichborn, *Story of the California Legislature of 1911*, App. pp. i and ii. The italics are mine.

"party circle" and the "party column" so dear to the hearts of all bosses and machine politicians, passed an amendment to the constitution providing for the initiative and referendum, put through in the face of strong opposition an amendment giving the people the right to recall all elected officials, executive, legislative, and judicial, repealed the weak railway rate regulation law passed at the preceding session and substituted for it a law empowering the state commission to fix absolute rates, enacted laws governing the conservation of natural resources; passed an employers' liability act, an eight-hour law for women, an amendment to the constitution giving women the right to vote, and numerous other progressive measures, which taken together made up a larger body of progressive legislation than all preceding legislatures combined had passed. "Up to the session of the 1911 legislature, representative government had, for a generation, been practically unknown in California. But with The People armed, as they now are, with the Initiative, the Referendum and the Recall, no government that is not representative, no government that fails to respond to the will of The People, need be tolerated."¹

The story of the development of the progressive forces in the Republican party would be incomplete without some mention of the magnificent constructive work done in the state of Oregon. The progressive measures of chief importance worked out in that state are those that have to do with direct legislation. These measures include the initiative, the referendum, the recall, direct primaries, presidential preference primaries, popular election of United States senators and a corrupt practices act. The constitutional amendment providing for the initiative and the referendum was adopted in

¹ Hiehorn, *Story of the California Legislature of 1911*, p. 348.

the general election of 1902 by a vote of about eleven to one.¹ In 1904 the direct primary law, including a provision for popular election of United States senators, was ratified by the people. In 1908 there followed the corrupt practices act and in 1910 the constitutional amendment authorizing the recall of all elective officials. The adoption of these measures enabled the citizens of Oregon to make and reject laws, recall recalcitrant and faithless officials, nominate candidates for the presidency directly and without the intervention of a convention, and choose their own United States senators. So far as laws could make them, the people of Oregon were politically free.²

Thus far we have seen how the progressives in the Republican party contended against the corporations on the issue of corporation control and conservation; we have seen, moreover, how there arose in various states, as the result of hard fighting, progressive spirit and progressive legislation. There remains to be considered the final phase of the contest with the corporations under Taft's administration, centering about the efforts of the corporate interests to have the tariff revised to their advantage.

Roosevelt, at the expiration of his seven years as President, in indorsing Taft as his successor, undoubtedly believed that he would carry to completion the measures for which he, Roosevelt, had so strenuously fought. Never did a man prove more disappointing. Although everyone, including Taft in his campaign speeches, interpreted the promise in the Republican platform as a pledge to revise the tariff downward, Taft allowed Congress to revise it upward, signed the bill

¹ Eaton, *The Oregon System*, p. 4.

² For a full discussion of the working of the Oregon system, its advantages and its perils, see Eaton, *The Oregon System*.

and then in a speech at Winona had the effrontery, as his opponents put it, to declare the Payne-Aldrich tariff the best tariff bill ever enacted. “. . . President Taft’s sponsorship for the administration railroad bill, with its commerce court, its repeal of the anti-trust act in its application to railroads, and its legalizing of all watered railroad capitalization; his course regarding Ballinger and the Cunningham claims, and the subterfuges resorted to by his administration in defense of Ballinger; his attempt to foist upon the country a sham reciprocity measure; his complete surrender to the legislative reactionary program of Aldrich and Cannon and the discredited representatives of special interests who had so long managed congressional legislation, rendered it utterly impossible for the progressive Republicans of the country to support him for reelection.”¹

It was the tariff session of 1909, however, which more than any other single factor, drew the line sharper between progressives and reactionaries and defined the progressive movement for the country. From the first, a small group of progressive Republicans, including Beveridge, Bristow, Clapp, Cummins, Dolliver, and La Follette, opposed the bill which the Payne-Aldrich forces planned to foist upon the people. All kinds of pressure were brought to bear upon these and other opponents of the measure to make them yield. They were invited to take breakfast with the President and talk it over; when persuasion failed they were threatened with loss of patronage, and in some instances the threat was carried out. When La Follette protested against these unfair tactics and asked that certain appointments be made, the President replied that he could not take the matter up “until after the tariff bill is passed.”²

¹ La Follette, *Autobiography*, pp. 477 et seq.

² *Ibid.*, p. 454.

Convinced that the time for an open break with the administration had come, a few progressive senators and members of the House of Representatives joined together to form the National Progressive Republican League. The object of the League was stated to be "the promotion of popular government and progressive legislation."¹ The specific reforms advocated were:

- (1) The election of United States senators by direct vote of the people.
- (2) Direct primaries for the nomination of elective officials.
- (3) The direct election of delegates to national conventions with opportunity for the voter to express his choice for President and Vice-President.
- (4) Amendments to state constitutions providing for the initiative, referendum and recall.
- (5) A thorough-going corrupt practices act.

The formation of this League, which grew with astonishing rapidity and was largely instrumental in obtaining reform legislation in the early part of 1912, forms at once the culmination of the progressive movement in the Republican party and the beginning of the new Progressive party. It clearly showed that there was no room for real progressives in the Republican party as it was then constituted and forced the issue of regeneration of the old party or the formation of a new one.

¹ La Follette, *Autobiography*, pp. 495 *et seq.*

CHAPTER IV

THE PROGRESSIVE MOVEMENT IN THE PROGRESSIVE PARTY

FROM the beginning of the present century down to the presidential campaign of 1912, the two great political parties of the country, the Democratic and the Republican, divided less and less on clear-cut issues. Both parties favored a revision of the tariff, both favored control of corporations, both favored an improved currency; but both favored them in a meaningless way. Within the parties, however, there were issues which, growing more and more definite, threatened to make the differences between the two factions within each party more pronounced than the differences between the parties themselves. It has already been pointed out how in the Republican and Democratic parties there grew up a body of men devoted to progressive ideals who insisted on a redefinition of the fundamental issues that would array on one side those who believed in government by the citizens of the nation and on the other those who believed in government by the special interests. In the Democratic party an attempt was made to organize these men by forming the Democratic Federation and adopting a definite set of principles; and similar action was taken in the Republican party by organizing the National Progressive Republican League already referred to.¹

¹ See Chapter III.

For years, however, the progressive elements confined their efforts to an attempt to reform their respective parties from within. The tenacity with which men cling to parties and party traditions has always been a most formidable obstacle in the way of independent reform movements. Men will brook almost any treatment and accept any compromise to ward off the vengeance of the organization or to avoid being read out of the party. And so for years while special interests everywhere had long since ceased to recognize party lines and bribed the leaders of both parties without discrimination or favor; and while the machine forces of both parties secretly united while ostensibly opposing each other and thus played on party affiliations and affections, the rank and file of the parties were loyal and voted regularly under their respective party emblems.

Such a condition of affairs, however, could not continue. Little by little the progressive, anti-machine men of both parties realized that in order to accomplish anything they must abandon party lines as the reactionary machine men of both parties did, and combine. And, when the progressive Democrats and insurgent Republicans had combined a few times to defeat some obnoxious bill proposed by the representatives of special interests, they began to find that they had more in common with each other than with the other members of their own parties, and thus the foundation was laid for the construction of a new party standing for new principles and new ideals.

The first conspicuous instance of the breaking down of party lines and the union of the progressive forces of both parties on a common issue took place in the extraordinary session of Congress in 1909, called for the purpose of revising the tariff. The Republican plat-

form of 1908 had promised a revision of the tariff and Taft—with everyone else—had interpreted that to mean a revision downward. The House of Representatives, however, controlled by Cannon, Payne, and others of that ilk, drafted and sent to the Senate a tariff bill that made substantial increases on many important articles. Aldrich, the Republican leader in the Senate, kept the bill in committee forty-eight hours and then reported it with substantial amendments, raising many of the duties above those in the House bill and offering no explanation of the changes. Aldrich further demanded immediate consideration of the bill, hoping to be able to have it passed before its real character was disclosed. A small group of progressives, including La Follette, Dolliver, Beveridge, Clapp, Dixon, Bourne, Borah, Cummins, and Bristow, opposed the proposition to consider the bill at once and managed to postpone the final passage until the bill had been freely discussed. For months this small band of progressives beyond the pale of the party organization fought the tariff bill. They forced the real issue home to the public and made it clear that the leaders in both houses of Congress had “sold out” to the interests. “The extra tariff session,” says La Follette in his *Autobiography*,¹ “did more to give the progressive movement a clear definition in the public mind than any one thing that has transpired in Congress.”

Another instance of the breaking down of party lines that attracted national attention came in the House of Representatives in 1910, when an attempt was made to curtail the powers of Cannon, Speaker of the House. The fight here was not so much against Cannon personally as it was against a system which had been in vogue for years and which Cannon used with conspicu-

¹ P. 447.

ous effectiveness. It had long been the custom in the House of Representatives for the Speaker to appoint a small committee, of which he himself was a member, to formulate rules to govern legislative procedure. This committee, known as the Committee on Rules, could limit the time given to individual members of the House for discussion of bills, could determine under what circumstances members were to be recognized, how committees were to be chosen, and in general control the methods of procedure.

To tear down this system, insurgent Republicans and progressive Democrats broke loose from party lines and joined forces. Representative George W. Norris of Nebraska in March, 1910, introduced a resolution to increase the number on the Committee on Rules to ten—six from the majority and four from the minority—and to exclude the Speaker from membership.¹ After a heated discussion, the resolution was adopted, 191 to 156.² Speaker Cannon, who admitted that he had been taken by surprise in the matter, interpreted its true significance when, after the vote was taken, he said, “... The assault upon the Speaker of the House by the Aminority (the Democrats) supplemented by the efforts Ref the so-called insurgents, shows that the Democratic obnority, aided by a number of so-called insurgents, interestuting 15 per cent. of the majority party in the mon e, is now in the majority, and that the Speaker of the house is not in harmony with the actual majority of the house as evidenced by the vote just taken.”³ After ci

¹ For the full resolution, see *Congressional Record*, Vol. XLV, part 4, p. 3429.

² *Ibid.*, p. 3436.

³ *Ibid.*, 3437. A sense of humor impels me to quote the following from the same speech: “The Speaker (Cannon) has always believed in and bowed to the will of the majority, in convention, in caucus, and in the legislative hall, and to-day profoundly believes

the House had overruled Speaker Cannon on the resolution to amend the rules, another resolution to declare the office of Speaker vacant and proceed to the election of a Speaker was offered. This resolution, however, was defeated by a vote of 192 to 155.¹

These two instances—the contest in the Senate and the fight in the House over the rules—although they are by no means the only ones that could be cited, nevertheless show clearly that in 1910 there was a strong determination in the minds of the progressives of both the old parties to combine to carry out progressive measures even if they had to break up their respective parties in the process. As early as 1911 there was a tacit understanding among the progressives of the two parties that they would fight their battle for party reformation separately in their respective parties in the campaign of 1912, but that, if both were beaten, they would unite to form a third party.

The differences between the two factions within the Republican and Democratic parties had greater opportunity to develop and manifest themselves in the early part of 1912 than in any previous presidential campaign by reason of the fact that a number of states held presidential preference primaries in that year. These primaries allowed the voter, in choosing delegates to the national convention, to pledge them to vote for designated candidates for President and Vice-President. The practical result of this system was to move forward by several months the contest for delegates and to force

that to act otherwise is to disorganize parties, is to prevent coherent action in any legislative body, is to make impossible the reflection of the wishes of the people in statutes and in laws.”

¹ It is interesting to note that Norris, who had introduced the resolution to break Cannon's power over the Committee on Rules, voted to retain Cannon as Speaker, showing thereby his reluctance to break down party lines and give the other side any advantage.

the fight before the people instead of within the four walls of a national committee room or convention hall. Consequently, in every state in which such primaries were held, the candidates of the various factions made speeches, distributed literature, and canvassed the voters; and, inasmuch as the issues between the conservatives and progressives in the two parties were more clear cut than issues frequently are between the different parties, it is fair to say that in almost every state where preference primaries were held there was waged a campaign that for intensity of feeling and warmth of argument rivaled most contests for the presidency itself.¹

In the Republican party, preparations were made very early to insure the nomination of a progressive in 1912. In April, 1911, there was held in Washington a conference of leading progressive Republicans at which it was proposed that Senator La Follette lead the fight against Taft for the Republican nomination. In July La Follette's campaign got actively under way. Progressive headquarters were opened in Washington, progressive clubs were organized in a number of the states, thousands of circular letters were sent out, and the services of a corps of speakers obtained. In the late autumn and winter La Follette himself made an extended speaking campaign in Ohio, Michigan, and Illinois, addressing thousands and being everywhere greeted with the greatest enthusiasm. On February 2, La Follette attended a banquet of the Periodical Publishers' Association in Philadelphia and made a long speech, in which he called attention to the danger that threatened the press and magazines of the country of

¹ The states that held presidential preference primaries in 1912 are: Oregon, Wisconsin, North Dakota, Nebraska, California, New Jersey, Illinois, Massachusetts, South Dakota, and Maryland.

being controlled by their advertisers for sinister purposes. The speech was not up to La Follette's usual high standard; he failed to hold his audience and he appeared weak and run-down from overwork. Shortly after the speech was delivered, Pinchot, who had been supporting La Follette and his candidacy, together with other prominent progressives, announced that La Follette's physical condition made it impossible for him to continue a candidate. These men thereupon transferred their allegiance to Roosevelt.

This, of course, was not the first time Roosevelt's name had been seriously considered by progressive Republicans as the most effective one to oppose to Taft. For months, in fact ever since Roosevelt's return from Africa, there had been persistent rumors that he would be a candidate for the presidency again if only sufficient pressure of the right kind could be brought to bear upon him. It is also said by many that he was willing to meet the pressure halfway. Be that as it may, on February 26, 1912, Roosevelt announced that he would accept the nomination if it were offered to him by the Republican presidential convention.

Roosevelt's course in waiting until the last moment to announce his intention to become a candidate after repeated statements that under no circumstances would he run has been vigorously denounced and variously explained. La Follette, whose fairness in the matter is subject to impeachment because of the great personal stake involved, suggests that Roosevelt all along was playing the rôle of a political trimmer waiting to see which way the wind would blow. According to the Wisconsin senator, Roosevelt never had been a progressive in the true sense of the term. He had vacillated and compromised. When he returned from Africa, however, in 1910, and found progressive sentiment

strong, he decided to take advantage of it for his own advancement. Believing, however, that 1912 would be a Democratic year and unwilling to be defeated, Roosevelt proposed that Taft should be nominated and allowed to go down to defeat at the polls. Impressed with the amount and sincerity of progressive sentiment which he encountered in a speaking tour in 1911, Roosevelt changed his mind about 1912 being a Democratic year and saw possibilities of a Republican victory. He was still unwilling, though, to test his own strength against Taft and so suggested that La Follette run. When La Follette was everywhere received by large, enthusiastic crowds, Roosevelt became convinced, so La Follette argues, that he himself could win; and thereupon gave the word to his followers to drop La Follette and turn over their organization to him. The opportunity came after the speech in Philadelphia when La Follette's temporary illness was used as a pretext for withdrawing from his support.

Although there is no full explanation on the subject from Roosevelt, the facts that are known make it extremely unlikely that La Follette's analysis of Roosevelt's motives is entirely correct. Roosevelt, it is true, had never been a progressive in the same sense that La Follette had. While La Follette had been rigidly uncompromising in his relations with special interests, Roosevelt had yielded whenever it was possible to forge ahead by doing so. Roosevelt fought consistently for good government and human rights step by step, interpreting the cause in terms of existing needs and always keeping just a little in advance. La Follette, on the other hand, laid down his program far ahead and stuck to it with savage persistence and heroic fidelity. It is because of these differences that the two men have never been able fully to understand each other; as was so well

shown when La Follette belittled Roosevelt's success in inducing Congress to pass in 1907 the Dolliver-Hepburn Railway Rate Bill and condemned it as a weak compromise when in the estimate of men all over the country it stood as a magnificent victory over a reactionary Congress.

According to those who support Roosevelt in the dispute, when Roosevelt returned from Africa in 1910, his mind was open on political questions and he denied his intention to run for the presidency again with no mental reservation. A great movement had developed during his absence from the country, and he asked for time to consider it. His first conclusion was that all efforts should be made to harmonize the conflicting elements in the Republican party and suppress differences; and in conformity with that conclusion he placed himself in the inconsistent position of openly attacking and defying the bosses in New York State in 1910 and at the same time accepting a stand-pat platform. As time went on it became evident to Roosevelt that the differences between the two elements of the Republican party were irreconcilable and an open conflict unavoidable; and when it came to a decision Roosevelt chose to support the progressive cause. It is pointed out in support of this view that in 1910, even before he returned to America, tremendous pressure was brought to bear upon Roosevelt to head the fight against Taft. It is only partly true that the seven governors wrote to Roosevelt asking him to run because they had been invited to do so. Once committed to a movement against the administration, the progressives in the Republican party wanted to do what they could to insure its success; and that success depended upon nothing more than upon a leader who was popular with the people and who could get votes. No man was better suited for this purpose

than Roosevelt. La Follette was new, comparatively unknown as a national figure, uncompromising and at times untactful. Such a man, by a speech or an act, would be likely to do irreparable injury to the cause. So reasoned many progressives; and, reasoning thus, they increased the pressure upon Roosevelt to run. It was natural and inevitable that, in the end, Roosevelt should accept; and so, while the defenders of Roosevelt do not assert that Roosevelt waited calmly until the nomination was thrust upon him, they protest against the charge that he dissimulated and pretended, knowing all the time that he intended to run.

The announcement of Roosevelt's candidacy and the transfer to him of many of La Follette's influential supporters left the latter with only a few backers and reduced the campaign for the most part to a contest between Roosevelt and Taft. Because of the close personal relations these two had long sustained, the debates were unusually bitter, the contestants in many instances stooping to invective and vituperation instead of discussing principles. In spite of this fact, the issues grew clearer and clearer. Although, in the minds of many, Roosevelt was leading a personal fight for restoration to power, the masses of the people saw in the canvass a conflict between privilege and democracy for the control of the presidency for the ensuing four years.

The crisis came in the national convention held at Chicago from June 18th to June 22nd. The delegates to the convention were chiefly of three classes: those who had been elected in state conventions; those who had been elected by a direct vote of the people; and those who had been elected by a direct vote of the people under pledges to vote for designated candidates for President and Vice-President. Of these classes, Taft, through the strength and influence of the federal ma-

chine, controlled the first. Roosevelt, because of his effective campaigning and great popularity, controlled the two others. It was apparent, as soon as the convention met, that the contest between Roosevelt and Taft would be close. Neither candidate had a clear majority of delegates whose seats were uncontested and the fight soon centered on these contested delegates. The Republican National Committee, which had been appointed by the preceding convention four years before and which was undoubtedly controlled by Taft, decided a sufficient number of cases in his favor to insure him a majority. The Roosevelt faction claimed that these decisions were not made in good faith, that the nomination had been stolen, and withdrew from the convention.

Fortunately, both sides of the case have been presented, the one in favor of Roosevelt by himself in an editorial entitled "Thou Shalt Not Steal," in the *Outlook* of July 12, 1913; and the other by La Follette in his *Autobiography*.¹ There were 1,078 delegates to the convention. Five hundred forty were necessary to nominate. On the final vote Taft received 561, or 21 more than the necessary majority. The burden of Roosevelt's argument is not that he (Roosevelt) was entitled to a majority of the delegates, but that Taft's majority was not honest. "More than enough delegates to make up Mr. Taft's majority in the convention," he says, "were seated there by contests so transparently fraudulent that honest doubt could not, and did not, exist in regard to them. President Taft was renominated by a majority of barely twenty-one votes, and two of these were publicly raped at the last moment from Massachusetts. If, therefore, more than nineteen or twenty-one of his votes were demonstrably fraudulent,

¹ Pp. 658 *et seq.*

all claim to an honest majority disappears." He goes on to show that more than nineteen or twenty^{ely} votes cast for Taft were fraudulent and that Taft^{at} majority, therefore, was not honest.

The burden of La Follette's proof, on the other hand, is not that Taft was honestly nominated, but that Roosevelt could not possibly claim a majority of the delegates. According to the analysis presented by La Follette, Roosevelt's actual strength in the convention was 451. There were in all 105 contests involving 248 seats. Of these 248 disputed delegates, 164 were given to Taft and 19 to Roosevelt without objection on either side. That left 65 delegates in dispute. The Roosevelt members of the committee themselves protested against seating but 72 Taft delegates. La Follette concludes that "there was no basis for the claim that a majority of the delegates honestly elected to the National Convention were for Roosevelt; that even if the entire 72 covered by the Hadley resolution had been given to Roosevelt, he would not have had enough to nominate him. . . ." ¹

The conclusion of the whole matter seems to be that neither Roosevelt nor Taft had enough honestly elected delegates to nominate him; that Taft through the National Committee, which he controlled, had sufficient doubtful cases resolved in his favor to change his minority into a majority. Whether the decisions in these cases were dishonest it is difficult to say. Without doubt, the same steam-roller methods that had been used in other conventions were used here; but because of the closeness of the contest and the bitterness of the feeling they were more conspicuous and more obnoxious than ever before.

Realizing that Taft by the use of steam-roller methods could dominate the convention and bring about his own

¹La Follette, *Autobiography*, p. 664.

nomination, most of the Roosevelt delegates refused to vote; and, after Taft was declared nominated, withdrew with their followers to a rump convention to lay plans for future action. In a speech delivered before the second convention, Roosevelt directed the delegates to return to their districts; and, after sounding the sentiment of the people, to return to Chicago again on August 5. If the reports made at that time showed sufficient interest to warrant it, Roosevelt urged that a new political party should be established.

Meanwhile, in the latter part of June, the Democratic Convention was held in Baltimore. Bryan, who had attended the Chicago Convention as a newspaper correspondent and had witnessed the influence exerted there by the machine, determined to force the issue in the Democratic party. He introduced a resolution putting the convention on record as opposed to the nomination of any man supported by the Morgan-Ryan-Belmont interests and refused to support Clark because he was backed by the corporations and seekers of special privilege. So tense was the situation at Baltimore that, had it not been for the third party threatening them, the machine elements would probably have refused to yield and would have driven the reformers from the party. But Bryan used Roosevelt's prospective party as a club to bring the reactionaries into line. If the conservatives controlled, the progressives were certain to desert to the new organization. As it was, had it not been for the rule that a two-thirds vote was necessary to nominate, Clark would have been nominated on the tenth ballot and the progressives in all probability would have gone over to the new party in a body. Bryan, however, by his skillful tactics managed to secure the nomination of Wilson and keep the Democratic party intact.

There seemed to be much less need of the establish-

ment of a third party on the first of August than there had been on the first of June. In June there was a strong likelihood that the conservative forces would win in both parties and thus drive the progressives to combine. But in August no such danger threatened. The Democrats had nominated a progressive of the advanced type who was a bitter opponent of boss rule and machine politics and who had carried his reforms into practice. Opposed to him was Taft, the nominee of the Republican party, a confessed reactionary drawing to himself all those who favored the perpetuation of the old régime. The issues seemed as clearly drawn as they could be.

Nevertheless, when the Roosevelt delegates, accompanied by a host of followers who had been attracted to the movement since the convention in June, met in Chicago on August 5, they reported that a canvass of the sentiment of the voters in their respective districts indicated a demand for a third party. With enthusiasm and solemn consecration to high purposes, such as had never before been witnessed in a national convention, the delegates organized the new party, giving to it the name National Progressive. In a remarkable speech, which he called his "Confession of Faith," Roosevelt outlined the purposes of the new party. His speech embraced practically the entire progressive program. He emphasized as of first importance the restoration of government to the people through the use of the devices of direct legislation. He pointed out the impotence of the two old parties, mere "husks," boss-ridden and manipulated by special interests, to meet the great social and economic revolution through which the country is passing; and concluded by insisting that, because of its freedom from damaging alliances with corpora-

tions and special privileges, the new party was the only political party adapted to meet the present crisis.

Roosevelt was nominated for President and Johnson for Vice-President by acclamation. The most significant incident connected with Roosevelt's nomination was the seconding speech made by Jane Addams of Chicago. This speech marked the entrance of women into national politics in a new sense, and, in addition to giving tremendous impetus to the suffrage movement, drew to the Progressive party the support of thousands of women in those states where women have the right to vote.

The platform adopted by the new party was in many respects unique. It was called "A Contract with the People," and set forth in great detail the measures which would be passed if the party were victorious in the election. Among the measures advocated to restore government to the people were: direct primaries, nation-wide preferential primaries for candidates for the presidency, direct election of United States senators, the initiative, the referendum, the recall, and an easier method of amending the federal constitution. Under "Social and Industrial Justice" the platform recommends legislation designed to prevent "industrial accidents, occupational diseases, overwork, involuntary unemployment and other injurious effects incident to modern industry." Prohibition of child-labor, minimum wage laws, the eight-hour day, publicity in regard to working conditions, compensation for industrial accidents, and continuation schools of industrial education are some of the other reforms urged under the same heading. With regard to corporations, the platform favors "the establishment of a strong federal administrative commission of high standing, which shall maintain permanent active supervision over industrial cor-

porations engaged in interstate commerce . . . doing for them what the government now does for the national banks, and what is now done for the railroads by the Interstate Commerce Commission." Declarations on other subjects follow, among the most important of which are the tariff, the high cost of living, currency, conservation, waterways, Alaska, equal suffrage, the courts, country life, inheritance and income taxes, and government supervision over investments. Never before had an important political party taken up in its platform so many vital issues in such a definite way.

With these candidates and this platform, after an existence of about three months, during which time it had to organize, from national committee down to election district, the National Progressive party polled more than four million votes. It is interesting to speculate as to the sources whence these votes came. The great bulk of the vote probably came from the Republican party. Taft's vote in 1908 had been 7,678,908; that of Roosevelt and Taft combined in 1912 amounted to very nearly the same, 7,604,463, indicating that the defections were chiefly from the Republicans. There were many Republicans who, although progressives, stuck to the old party or voted for Wilson. The most important members of this group, of course, were La Follette and his followers, who could hardly be expected to support the new party after the treatment they had received before the primaries. Then there were many Republicans who do not come in the La Follette category, who sympathized with the new party, but voted against it because of antipathy toward Roosevelt personally.

From the Democratic ranks the new party drew comparatively few. Wilson's vote in 1912 was 6,293,019, 116,085 fewer than were cast for Bryan in 1908. Most

Democrats were quite content to remain within the party and allow the Republicans and progressives to kill each other off. Some Democrats, of course, voted for Roosevelt because of his great personality just as some Republicans voted against him because of personal dislike; but they were very few.

It would be interesting and instructive to know approximately how many votes the Progressive party cost socialism, but no estimate is possible. The Socialist vote in 1912 was 901,873, a gain of 481,080 over that of 1908; but it is tempting, though profitless, to speculate on what it might have been had not the Progressive party entered the field. Offering as it did an opportunity to enroll in a new party, apparently free from corruption and bossism, emphasizing as it did the need of extending the activities of government to relieve social and economic distress, it is safe to say that the Progressive party appealed to thousands of Republicans, Democrats and Independents who were about to seek in socialism the only available remedy for the existing political ills.

What the future of the Progressive party will be, and how many of these converts it will hold, remains to be seen. Present indications seem to point to the permanency of the movement. Greater opportunity to make important constructive contributions to political reform is offered to the new party than is offered to any of the older parties; greater than is offered to either the Republican or the Democratic party, because it is difficult for them to free themselves from the traditions and issues of the past; greater than is offered to the Prohibition or the Socialist party, because they are distrusted on account of their reputation for extreme radicalism and the impracticability of their programs. The immediate question that is being presented to the lead-

ers of the Progressives is whether it would not be well to return to the Republican party, from which the new party largely sprang, and reform it from within. It is only in this way, point out the more practical politicians in both parties, that victory can be wrested from the Democrats. That a fair number of Progressives, who voted against the Republican party in 1912 more as a protest against party corruption and misrule than as an indication that they had abandoned the party entirely, have returned, is, of course, quite true. But it seems altogether likely that the greater number of those who joined the new party will remain. That this is likely is shown not only by the fact that the new party controls several of the largest states, but also by the fact that in states where it is comparatively weak, as in New York, thorough party organization has been effected. Lecture bureaus, educational bureaus, and legislative drafting bureaus have been formed for the purpose of aiding in the solution of vital social and economic problems of modern life so far as they are affected by government.¹ Untrammelled by the issues of the past, with a keen realization of present political needs and a determination to meet those needs, the Progressive party has before it a bright future and seems destined to fill an important place in the political life of the nation.

¹ For example, in New York State, the legislative committee of the National Progressive party has drafted, among other bills, a minimum wage act, a direct primary law and a Massachusetts Ballot act. All bills drafted by the committee are introduced into the legislature by some Progressive member.

CHAPTER V.

THE PROGRESSIVE MOVEMENT IN THE SOCIALIST PARTY

THE progressive movement in the Socialist party differs from the progressive movement in the Democratic and Republican parties, not so much in the essentials of the movement as in the emphasis placed upon them. Progressives in the Democratic and Republican parties, although they appreciate the need of extending the functions of government, emphasize primarily the elimination of organized special influence and the modification of the structure of government with a view to making it more easily controllable by the people. The Socialist party, on the other hand, places the primary emphasis on the desirability of extending the functions and activities of government in the interests of the individual and looks upon the removal of corruption and the simplification of government as mere means to that end.

The progressive movement in the Socialist party differs from the progressive movement in the Progressive party, with which it is most readily compared, not so much in the emphasis placed upon any single phase of the movement as opposed to the other phases, as in the kind and amount of emphasis placed upon one phase; i. e., the extension of the activities of government. Both the Progressive and Socialist parties believe in freeing government from special influence, in making it more

responsive to public opinion and in insisting upon its use to relieve social and economic distress. Both parties agree further in regarding the first two of these phases of the movement as subordinate to the third. But they differ fundamentally with regard to the extent to which, the purposes for which, and the methods by which the activities of government should be increased.

While the Progressive party and, in an even greater degree, the Republican and Democratic parties consider the normal state of society that in which the individual does all things for himself and look upon the government as a power to be invoked only when individuals cannot adequately take care of their own interests, the Socialist party regards the ideal and normal state of society that in which all functions are exercised by the state, and accepts the present condition of affairs as an unfortunate makeshift which must sooner or later be abandoned. The Socialist and Progressive parties both have a place in the progressive movement, but they enter it from opposite directions. Socialists start with a complete system of social coöperation and accept particular measures that extend governmental activities, such as workingmen's compensation or mothers' pensions, as steps in the right direction, but nevertheless steps only. The Progressive party starts from complete individualism as a base and accepts any remedial legislation, not as a temporary expedient, but as an end in itself. With the Socialist party, the burden of proof is on the person who opposes an enlargement of governmental functions to show that it is not needed. With the Progressive party, the burden of proof is on the person who proposes the enlargement to show that it is essential.

The Progressive and Socialist parties differ, moreover, with respect to the purpose that should prompt

an increase in governmental activities. The socialism of to-day would extend the functions of government primarily in the interests of the laboring classes by giving to them the control of the means of production and distribution. The socialist movement is everywhere recognized as an outgrowth of the modern industrial system and is inseparably connected with labor. With the farmer, the banker, the merchant, it has little or nothing to do. Socialists are divided among themselves as to whether farms should be owned and managed coöperatively. Only a sentence is given in the party platform to the subject of an improved banking or currency system to aid the banker or the merchant. On the contrary, the Socialist party in its platform declares that it is "the political expression of the economic interests of the workers. Its defeats have been their defeats and its victories their victories. . . . In the face of the economic and political aggressions of the capitalist class, the only reliance left the workers is that of their economic organizations and their political power. By the intelligent and class-conscious use of these, they may resist successfully the capitalist class, break the fetters of wage-slavery, and fit themselves for future society which is to displace the capitalist system." ¹

And again, "In the defeat or victory of the working class party in this new struggle for freedom lies the defeat or triumph of the common people of all economic groups, as well as the failure or the triumph of popular government." ²

Socialists, so far as they propose to use government in the interests of a special class, are doing almost precisely what the Republicans and Democrats have al-

¹ Socialist party platform, 1912.

² *Ibid.*

ready succeeded in accomplishing, the only difference being that the Republicans and Democrats controlled government in the interests of the capitalist class, while Socialists would control it for the workers.

The progressive movement, in urging an extension of governmental functions, does so without having any particular class in mind. Its aim is to introduce remedies where remedies are needed, to reconcile conflicting interests, to destroy no classes and to recognize none. It would, therefore, favor a proposal to aid the farmer by a country life commission, the banker by improved currency laws, and the laborer by compensation, pension, and insurance laws. The progressive movement believes that if the arteries of government are freed from impurities, if a majority of the people are given the opportunity to express themselves clearly and easily, no class legislation will result and that the best interests of all will be conserved.

The difference in the methods pursued by the Progressive and Socialist parties in effecting their aims, arises directly from the difference in their conception of governmental intervention in individual affairs. Like Ibsen's Brand, the thorough-going Socialist will have "all or nothing." He outlines his whole program, which is nothing short of the socialization of the most important activities now carried on by individuals, and adheres strictly to it. He consents to favor specific reforms, but does it with reluctance and suspicion. Speaking of public ownership of public utilities, the party platform says: "We warn the working class against so-called public-ownership movements as an attempt of the capitalist class to secure governmental control of public utilities for the purpose of obtaining greater security in the exploitation of other industries and not for the amelioration of the conditions of the

working class.”¹ There is a tendency to reject everything that does not measure up fully to the Socialist standard.

Just as the history of the progressive movement in the Republican, Democratic, and Progressive parties has been the history of a development from extreme individualism toward a moderate socialization of activities, so the history of the progressive movement in the Socialist party has been the history of a development from extreme socialization toward a moderate individualism. And just as the members of the other parties were forced by the complex conditions of modern industrial life to conclude that there are many functions which individuals cannot exercise effectively alone; so the members of the Socialist party have been forced by the same complex conditions to conclude that there are many things that individuals cannot do well together. Beginning with an insistence upon the complete socialization of all activities, socialism has passed through a number of stages, each one of which has been characterized by a weaker insistence upon its original principles and a fuller appreciation of the practical difficulties involved in carrying them into effect.

The first of these phases through which socialism in this country passed was marked by an emphasis on the need of socializing all activities and a refusal to accept any compromise. Finding it impossible to carry out their idea under the conditions of normal society, many socialists withdrew from it and established independent communities of their own. The communities thus established were chiefly of two kinds: sectarian, composed of those who sought freedom of worship chiefly and regarded the socialization of

¹ Hillquit, *History of Socialism in the United States*, p. 351.

activities as secondary; and non-sectarian, made up of men who were eager to found settlements that should be purely communistic.

The extremes to which the extension of the functions of government or society was carried in the early period of socialism are clearly shown in the practices of these communities. Although there was a considerable number and the customs varied greatly, in most instances, the members labored for the community as a whole, in some cases being assigned daily tasks by the governing board of the community. All property was owned in common and the communistic theory was sometimes extended to persons, polygamy and polyandry taking the place of monogamy. Food, clothing, and other necessities were taken from the common store in amounts that were determined not by the value of the service rendered to the community but by the need to continue that work effectively. Government and society were supreme.

Just as the extreme individualism that prevailed prior to the Civil War could not continue as society became more complex, so these little communistic settlements had to go for the same reason. And even if there had been no pressure from without, they probably would have been destroyed before long by dissensions within. As it was, in a number of communities, members refused to live up to the standards proposed; in one case a prominent member defaulted with a large sum of money; members tired of the monotonous work and demanded a division of the community's property.¹

It is noteworthy, too, that this experiment in the complete socialization of activities failed under ideal conditions; and that the few successful communities succeeded because they abandoned communism and not

¹ See Hillquit, *History of Socialism in United States*, pp. 29-145.

because they adhered to it. Speaking of the success of some of the sectarian communities, Hillquit says: ". . . Their communism was but a secondary incident to their existence, and whenever their material interests required, they sacrificed it, without compunction of conscience. . . . Their material success was thus to a large degree due not to their communism, but to their departure from communism."¹

Forced by changing conditions and a sense of failure to abandon the ideal of complete socialization which it had hoped to realize in these Utopian communities, socialism entered upon the second stage of its development. The growth of the modern factory system had brought with it a radical change in the condition of the working classes. Instead of being free economic agents owning their tools and working when and for whom they chose, they became, as the socialists alleged, economic "slaves" and worked with the tools and at the bidding of another. To this divorcement of the laborer from the tools of his handicraft, socialism traced most of the ills of modern society; and turned from the visionary attempt to establish perfect communities and directed its attention to the task of organizing labor for the ultimate purpose of overthrowing capitalism and gaining control of the means of production and distribution.

In changing its program from the complete socialization of individual activities in the interests of all the people to a partial socialization in the interests of one class of people, the socialist movement was simply making one of a number of modifications of its fundamental principles that it is constantly forced to make when it comes in contact with the practical conditions of life. Because it realized that it was impracticable, it

¹ *Ibid.*, pp. 139-140.

no longer proposed that government should dictate to a man the work he should do, the clothes he must wear, the place in which he must dine, and the home where he must live. And because it realized that it was impracticable, it no longer advocated that all individuals should be included in the contemplated socialization. Only the laborers were admitted; capitalists were to be rejected and fought to the bitter end.

The activities of the socialist movement in this second period were confined, therefore, to labor unions and labor organizations. Conventions were held; newspapers were founded; associations were formed. Many of the workers coming from abroad brought with them the doctrines of Marx, Engel, and other prominent socialists in Europe, and a knowledge of the methods used by workingmen in foreign countries to win success.

For some time, however, no effort was made to enter politics as a means of accomplishing their ends. In fact, the congress of the North American Federation, one of the most important labor organizations, had declared emphatically against it. In a resolution adopted at one of its sessions, it said, "The North American Federation rejects all coöperation and connection with the political parties formed by the possessing classes, whether they call themselves Republicans or Democrats, or Independents or Liberals, or Patrons of Industry or Patrons of Husbandry (Grangers), or Reformers, or whatever name they may adopt. Consequently no member of the Federation can belong any longer to such a party."¹

In spite of this vehement protest, however, many socialists planned to establish a political party as a means of propagating and carrying into effect their reforms.

¹ Hillquit, *History of Socialism in the United States*, p. 203.

Brought face to face with the practical problem of obtaining certain legislation, socialism found it necessary to compromise and yield again. It organized much as other parties organized, held political conventions, adopted platforms, appealed to all classes of voters, and even went so far as to mention immediate needs, such as the initiative, referendum, and recall.

The first important political party organized to support socialism was the Socialist Labor party, which was established in 1874. This party increased in strength for a time and then, because its leaders insisted upon a too strict adherence to socialistic principles, disintegrated. Some of the factions united to form the Socialist party, which is the political representative of socialism to-day.

Where the Socialist party has won elections, as in Milwaukee and Schenectady, it has given further evidence of the impossibility of living up to its tenets in the face of practical problems. While it is of course true that little can be done by a Socialist mayor in a single city when the state and national officials belong to hostile parties, it is equally true that a Socialist administration dare not use the little power which it has to put its reforms into effect. Responsibility brings sanity and judgment and the principles of an ideal system become greatly modified when put to the practical test.

The evolution of socialism, therefore, through these three stages, the community stage, the labor stage, and the political stage, has been in the direction of more individualism and less socialization. The evolution in the other parties has gone so far in the opposite direction, from individualism toward socialization, that the most extreme of these parties, the Progressive, is not very different from the Socialist party in many of its

beliefs. Radical Progressives and conservative Socialists, therefore, could almost meet on common ground. As time goes on these parties will undoubtedly grow even closer together. Everything points to a continuation of the tendency of the Socialist party to modify its demands and make them more practical as it comes more and more within reach of a victory in a national or state election. Socialism triumphant at the present time probably could not be and would not try to be much more radical than the majority of progressives scattered through the other political parties.

It is interesting to consider the causes that are responsible for the great increase in the Socialist vote in the past few years. Undoubtedly, one of the principal causes is the dissatisfaction with the present state of affairs. Many of the votes cast in the Socialist column are not votes for the Socialist party so much as they are votes against the Democratic and Republican parties. Socialism, because it holds out before men an ideal state for the future, thrives on discontent and pessimism in the present.

Another cause of the increase of socialism is the increasing need of an extension of governmental functions. Fifty years ago most men would have sneered at the thought of the United States buying and operating the railroads of the country. To-day some of the ablest men are advocating precisely that thing. Already many municipalities own and operate public utilities and states exercise strict supervision over private corporations by means of commissions. The government has supplanted to a considerable degree the express companies and plans to go still farther. Everywhere, in city, state, and nation, there is a growing confidence in the socialization of certain activities.

Still another cause for the success of the Socialist

party is the change in the character of the party itself. The impossibilists who declared undying war against the capitalists and would accept nothing short of their complete annihilation are rapidly disappearing. By a campaign of education, Socialists are convincing many people that their party does not stand for violence, incendiarism, and bloodshed, but for coöperation by all the members of society for their own common welfare. The leaders of the party are willing to compromise when they feel that by doing so they can advance the movement as a whole. The experience of those cities that have had Socialist administrations has done much to reassure many who feared what the Socialists would do if they were elected to office.

In its relation to the progressive movement at the present time, socialism may be said to be the goal toward which the movement is tending. It is an ideal which the movement hopes some day to see realized. But before the measures advocated by the Socialist party can operate successfully, it is essential that preliminary steps be taken to remove corruption and to restore the government to the people. Until these things are done socialism even in its present modified form cannot be permanently successful.

CHAPTER VI

THE PROGRESSIVE MOVEMENT IN THE PROHIBITION PARTY

It is interesting to consider the development of the progressive movement in the minor political parties, not because of the importance of the parties themselves, but because the recognition by them of the underlying principles of the movement shows how universal it has become in our political life. Even the smallest political party, with seemingly narrow and insignificant objects in view, will be found upon analysis to stand for the elimination of special influence from government, the modification of the structure of government, or a greater participation by it in the solution of economic and social problems. In some instances, one or more of these phases of the progressive movement are openly recognized, but are made subordinate to some one reform around which the interests of the party center; in other instances, these minor parties in supporting some phase of the progressive movement, call it by some other name and thus make obscure the connection of the party with the movement as a whole; but in practically all cases the differences are differences of expression rather than of purpose, and at bottom each of these smaller political parties will be found to have much in common with its older and more successful rivals.

One of these minor political parties which has had

a close connection with all the phases of the progressive movement is the Prohibition party. Organized in 1869, holding its first national convention in 1872, participating in every presidential and most gubernatorial campaigns since it was established, the Prohibition party has been an interesting, though not important, factor in our political history. In its first campaign it polled but 5,608 votes in a total of over six million; and, although its membership has constantly increased, so far as actual numbers are concerned, and it has on several occasions held the balance of the popular votes cast for President, its percentage of total votes cast has increased but slightly and it has never been a serious contender in any national election. The progressive movement in the Prohibition party began in a protest against the use of government by the liquor interests for special purposes. As early as 1862 the Beer Brewers' Congress, at its national convention, adopted a resolution urging upon the manufacturers and retailers of beers and other intoxicating beverages the need of entering politics in order to protect their interests from the attacks of "fanatics" who were trying to suppress the liquor traffic. The congress at the same convention went even farther and passed a resolution calling upon all those interested in the unrestricted sale of liquors to refuse to vote for or support any candidate who advocated prohibition.

Up to the time when the brewers and other similar bodies had definitely organized for political purposes, the fight for prohibition had been waged largely by an organization known as the Good Templars, who used as their sole weapons education and moral suasion. This association, realizing the need of a more effective opposition with which to face the organized supporters of the liquor traffic, decided to form a political party,

the principal purpose of which would be to secure prohibition by legislation.¹

In so far as the Prohibition party aimed to prevent class government—in this case government by brewers, distillers, and saloon-keepers—it occupied common ground with the progressive elements in the older parties when they opposed class government by railroad, industrial, and commercial corporations. But, unfortunately for its development, the Prohibition party did not restrict itself to that one object. In fact, it has always confused what should have been two totally distinct purposes; i. e., the elimination of special influence from government and the prohibition of the manufacture, sale, and use of intoxicating beverages. There are thousands of men who, although they themselves use intoxicants, would join a movement to prevent the prostitution of government to the ends of liquor dealers. And, on the other hand, there are many manufacturers and distributors of liquor who, although they might believe in abstinence in their own cases, would feel no compunction about using government to aid their own business.

If the Prohibition party had conformed more closely to the principle of opposing class legislation and removing the saloon and allied interests from politics instead of giving the larger portion of its energy to effect the complete prohibition of the liquor traffic, its place in the progressive movement would have been much more important than it is to-day. The evidences of the corrupt use of government by brewers, distillers, saloon-keepers, and others of the same class are apparent on every hand. From the great whisky barons who

¹For an account of the circumstances surrounding the formation of the Prohibition party, see Black, *One Hundred Years of Temperance*.

send their representatives to the halls of Congress down to the corner saloon-keeper in any of our cities, liquor interests have exercised a most injurious influence on our political life. By focusing attention on this one feature, by bringing home vividly the saloon as the place of snap conventions and the home of ward-healers, by showing up the police as the ally and friend of the saloon-keeper in support of brothels and gaming-houses, by picturing the demoralizing effect upon city administrations of bribe-money offered by saloon-keepers and accepted by city officials—the Prohibitionists would have had a vitally effective appeal and would have made ready converts. Instead, the party has emphasized facts which are only too well known and has offered a remedy, the efficacy of which is very doubtful. Tables are given showing the relative expenditure of the United States for meat, iron and steel, sawed wood, tobacco, flour, public education, and liquor. Statistics are produced showing the number of criminals arrested in each of the important cities of the country and the percentage who have become criminals through strong drink. Whisky, beer, and wines are analyzed and the effects of their ingredients upon the body carefully pointed out. Misery, poverty, and crime are traced to the drink habit. Most of these facts people admit. But although they may concede the accuracy of all these statistics, they refuse to give their sanction to any attempt by the government to reform individuals by legislation. The drink passion, like all other passions, can hardly be controlled by statutes and ordinances, fines, and penalties; and it would seem as impossible to abolish the excesses of drinking by legislation as it would be to destroy lust and licentiousness by the same means.

So far as the drink question is concerned, therefore, the Prohibition party has contributed very little to the

progressive movement. By its attacks on what has long been considered individual liberty, it has alienated many who might have been counted upon for support had the relation of the drink question to politics been approached from a different angle. As it has developed, the party has gone farther and farther from what should have been its main purpose; i. e., to oppose special influence; and its insistence on the prohibition of drinking has become more and more marked. In the party platform adopted by the national convention in 1912, the declaration is made that "the alcoholic drink traffic is wrong; is the most serious drain on the wealth and resources of the nation; is detrimental to the general welfare and destructive of the inalienable rights of life, liberty and the pursuit of happiness. All laws taxing or licensing a traffic which produces crime, poverty and political corruption, and spreads disease and death, should be repealed. To destroy such a traffic there must be elected to power a political party which will administer the government from the standpoint that the alcoholic drink traffic is a crime and not a business, and we pledge that the manufacture, importation, exportation, transportation and sale of alcoholic beverages shall be prohibited."¹

So far as issues other than the drink issue are concerned, the Prohibition party has always been abreast or ahead of the progressive movement in the other political parties. In the campaign of 1912 the national platform contained planks favoring woman suffrage, the suppression of traffic in girls, protection of the rights of labor, the direct election of United States senators, the abolition of child labor, the initiative, referendum, and recall, a non-partisan tariff commission, an income tax, an inheritance tax, and practically all the other impor-

¹Pamphlet issued by National Prohibition party.

tant progressive measures. The progressivism of the party, moreover, is as old as the party itself. The first national platform, adopted in 1872, advocated woman suffrage and the direct election of President and Vice-President when the other parties were unwilling to take a definite stand on any of these questions. It is interesting to compare the weak, vacillating statement concerning woman suffrage in the Republican platform of 1872 with the clear-cut statement of the Prohibitionists in the same year. The Republican platform says: "The Republican party is mindful of its obligations to the loyal women of America for their noble devotion to the cause of freedom. Their admission to wider fields of usefulness is viewed with satisfaction; and the honest demand of any class of citizens for additional rights should be treated with respectful consideration."¹ In marked contrast to the "respectful consideration" accorded by the Republicans, the Prohibition platform declares "that suffrage should be granted to all persons, without regard to sex."² Similarly, as the progressive movement has developed and new measures have been involved, such as the direct election of United States senators, the initiative, the referendum, and the recall, regulation of railroad rates, control of monopolies, the Prohibition party has been among the first to advocate them openly and unequivocally.

This very willingness of the Prohibition party to accept and support a number of fundamental debatable reforms has been one of the chief causes of its lack of success. In the first place, few persons are willing to accept the platform as a whole. The stand which the party takes on the drink question is, of course, the thing that principally frightens away prospective

¹ McKee, *National Conventions and Platforms*, p. 152.

² *Ibid.*, p. 158.

converts; but, on the other hand, many conservative men who approve of prohibition are unwilling to advocate woman suffrage, the initiative, the referendum, the recall, and all the other disputed measures. In the second place, even among the few who do enroll under the Prohibition standard, homogeneity is almost impossible. They disagree as to the best method of handling the issue of prohibition and as to the relative importance of that and other issues in the party platform. This disagreement within the party became manifest in 1896, when the delegates to the national convention found it impossible to agree on the issues which should be included in the party platform. The platform finally adopted by the Prohibitionists declared that its purpose was to organize and unite all the friends of prohibition into one party, and in order to accomplish this end they deemed it of right to leave every Prohibitionist the freedom of his convictions upon all other political questions, and "trust our representatives to take such action upon other political questions as the changes occasioned by prohibition and the welfare of the whole people shall demand."¹ Two hundred and ninety-nine of the delegates, refusing to accept this narrow platform, withdrew from the convention and organized the National party, which adopted a platform that contained an expression on every important political question of the day. The policy of the deserters has prevailed and to-day the Prohibition party platform covers most of the questions found in the platforms of other parties. As a result of this diversity of issues, not only is the party small, but it lacks the coherence and the solidarity that are necessary to success. While the Socialist party, by limiting its demands to a single proposition; i. e., that the community should own the

¹ McKee, *National Conventions and Platforms*, p. 319.

means of production and distribution, has grown with amazing rapidity, the Prohibition party, by scattering its attack, has had little or no real growth in the forty years of its existence.¹

Strange as it may seem, although the Prohibition party as a party has been at a standstill since it was established, the thing for which it chiefly stands; i. e., the prohibition of the sale of intoxicating beverages, has been gaining ground. A great wave of prohibition has swept over the country, especially in the middle West and South, resulting in state-wide prohibition in many instances and in local option in others. In every state where political action has been taken, it has been taken not by the Prohibition party but by the Democratic and the Republican parties. One reason why voters when they decide in favor of prohibition go to the Democratic and Republican parties to put it into effect is because they have an innate distrust of a party that makes political capital out of a moral issue, especially when that issue involves personal liberty. A second reason closely connected with the first is the unwillingness of voters to support so-called "Sunday-school politics." Because prohibition is so largely a moral and religious issue, many ministers have been prominent in the councils of the party; and these ministers, through lack of familiarity with political methods and an inevitable tendency toward narrow-mindedness, have alienated rather than attracted supporters. In the third place, many have believed that the sole issue for which the Prohibition party stands is the abolition of the liquor traffic and that the party has no policy with regard to the other problems of the day. The conclusion

¹ In 1872 the Prohibition party polled 5,608 votes of more than 6,000,000—less than 0.1 per cent. In 1912 it polled 207,965, of about 15,000,000—about 1.3 per cent.

which they draw from this supposition is that once elected, the only logical thing for the Prohibition party to do would be to legislate itself out of existence by passing a law prohibiting traffic in liquors and thus doing away with the chief reason for the party. A final reason for the failure of the Prohibition party to play as prominent a part as it should in the spread of prohibition, is the seeming needlessness of a party organized for that purpose alone. All that is needed to obtain prohibition is the passage of a law and its enforcement; and for that purpose a Prohibition party would seem as needless as a Direct-Primary party, an Initiative party, or a Recall party. As an organization existing to educate people concerning the dangers of excessive drinking and to influence legislation in suppressing it, the Prohibition party is justifiable; as a political party organized for independent action and having a fundamental policy with regard to government, the Prohibition party seems doomed to fail.

This consideration of the Prohibition party must make apparent its close connection with the progressive movement. Could it but leave off emphasizing the evil of strong drink and concentrate on the special influence exercised by those who deal in it; could it then but extend its opposition to special influence to include that exercised by industrial and commercial corporations, railroads, and other agencies; could it but retain the measures now in its platform for modifying governmental machinery and relieving social and economic distress, it would be as fair an exponent as any of the other political parties of the basic principles for which the progressive movement stands.

From the consideration of the development of the progressive movement in the Democratic, Republican, Progressive, Socialist, and Prohibition parties, it must

be clear that present party lines are illogical and anomalous. Each of these parties has in it hundreds of members who hold the same beliefs and support the same measures and yet they are prevented from taking united action because of party lines. What is needed and what is slowly but inevitably coming is a realignment of the supporters of different political parties. Such a realignment should place in one of the great parties those who believe in government by the few, who fear any great addition to the power of the people, and who oppose the extension of governmental authority; and in the other there should be gathered those who believe that fundamental readjustments must be made, that the many are as competent to run the government in their own interests as the few are to run it for them, that substantial changes should be made in the structure of government to give to the people a large authority, and that government and not the individual must solve modern economic and social problems.

PART II

THE PROGRESSIVE MOVEMENT IN THE
NATION

CHAPTER VII

MEASURES OF CORPORATION CONTROL

THE first of the reforms which the progressive movement in the nation advocates is the removal from government of organized influence exercised by a minority for special purposes. Because this influence for the past quarter of a century has been exercised chiefly by corporations of various kinds in their own behalf, the practical problem becomes one of putting into effect measures that will give to the government adequate control over these corporations. The struggle between the people and the corporations to decide which should control the government and for what purposes, has been long and bitter; and the end is scarcely now in sight. Beginning with the unprecedented industrial and commercial expansion that followed the period of reconstruction after the Civil War, the great corporations recognized the extraordinary opportunities for gain that would follow a preëmption of government in their own interests; and before the majority of the voters realized the true situation or could devise means to prevent it, these interests had organized their parties and their lobbies and were in almost complete control.

It was only with the beginning of Roosevelt's administration that effective steps were taken to break the domination of the corporations and bring them under real subjection to the people and the national government. And then because the hold upon government

had been established so long and because gigantic trusts and monopolies were so much a part of the warp and woof of the nation's industrial, commercial, and political life, ruthless measures were impossible and the utmost caution had to be observed. Roosevelt, by his repeated attacks and forceful appeals to public opinion, brought the issue home to the masses of the people; and, although it was impossible for him to claim any more than a drawn battle with the corporations at the end of his seven years in office so far as the passage of constructive measures is concerned, he aroused the public opinion that was later to demand and obtain the legislation necessary to give the government the upper hand.

The government seems now to have won the victory; "at last the masters of business on the great scale have begun to yield their preference and their purpose, and perhaps their judgment also, in honorable surrender."¹ After an era of corporation supremacy, followed by an era of sharp contest between people and corporations, the country appears to have entered upon an era of constructive legislation to secure to itself the fruits of the "honorable surrender" to which President Wilson refers. Although the outlook for the future is bright, it must not be taken for granted that the corporations will submit passively to legislation that seriously affects their own interests. Corporations have a habit of bending before the storm of public opinion to keep from breaking. Men have long realized that one of the most effective ways to block real reform is to support mock reform and that "honorable surrender" often offers an excellent opportunity to enter and study the defenses of the enemy.

It will aid perhaps in a discussion of the relation

¹ Message of President Wilson to Congress, January, 1914.

of government to business and in considering the measures that will be necessary in the immediate future, if the three great classes of corporations with which the national government is chiefly concerned are taken up in turn.

The first of these three classes of corporations which the people have been struggling to remove from politics and to subject to effective governmental supervision are the railroads. The fundamental policy of the federal government with respect to the railroads has been to regulate rather than to destroy; common prudence, if nothing else, convinced the members of Congress during the period when people were clamoring for a cessation of railroad abuses that whatever happened, the railroads must be conserved and developed. The national government, moreover, was aided in settling upon this policy by the practice prevalent during the late seventies and eighties in many of the states. These states, to cure the ills arising from railroad abuses, had established commissions with power to investigate and report the affairs of railroads and to make recommendations for legislation. Following the general plan of these state commissions, Congress in 1887 established the Interstate Commerce Commission, giving to it general jurisdiction over railroads engaged in interstate commerce.

Although the Interstate Commerce Commission marked a great step in advance in the direction of governmental regulation of corporations, its powers were at first somewhat seriously limited. In the first place, the act applied only "to any common carrier engaged in the transportation of passengers or property whether by railroad or partly by railroad and partly by water, when both are used."¹ Express companies, sleeping-car

¹ 24 United States Statutes at Large, p. 379.

companies, pipe lines, telephone, telegraph, and cable companies, warehouses, refrigerating plants, and other similar instrumentalities and facilities of commerce were not included. The result was that railroads, while unable to offer rebates to shippers directly without violating the law, by an agreement with express companies, or by unfair discrimination in connection with the necessary adjuncts of commerce, such as warehouses and terminal facilities, could secure special privileges for their customers and thus carry on what was essentially the same as the former rebating. There was too, in the original act, a defect as to jurisdiction in that no provision was made for railroads operating entirely within a territory. All such railroads, because of this omission, were beyond the commission's control.

In the second place, the act, although it imposed a number of duties and liabilities upon railroads with respect to reasonableness of rates, discrimination in favor of persons or places, long and short haul charges, pooling agreements, publicity of rates, and due notice to the public of advances thereof, did not touch the kernel of the whole rate-making problem. Not only did it fail to give to the commission the power to establish a scientific basis of rate-making by ascertaining the physical valuation of the railroads, but it did not even give the commission the right to fix rates at all. The statute provided merely that rates should be just and reasonable, leaving to the commission the impossible task of defining and applying those terms. As to what rates were reasonable or unreasonable, the railroad's word was as good as the commission's and it could be varied to suit different occasions. How difficult it was for the commission to control rates with the meager power given to it by the act and how urgent was the need of physical valuation of the roads are indicated in

the following extract from the report of the commission for 1909:—"There is, in our opinion, urgent need of a physical valuation of the interstate railways of this country. In the so-called 'Spokane Case,' the engineers of the Northern Pacific and Great Northern railways estimated the cost of reproducing those properties in the spring of 1907. In the trial of pending suits brought by the above companies to enjoin certain rates upon lumber which the commission had established from the Pacific Coast to eastern destinations, these same engineers have again estimated the cost of reproduction in 1909. The estimates of the latter year exceed the estimates for 1907 by over 25 per cent."¹ From the point of view of controlling rates and rate-making, the original act of 1887 was totally inadequate.

Singularly enough, the statute creating the Interstate Commerce Commission contained no prohibition of an abuse of the railroads which more than any other single thing, perhaps, fostered their corrupting influence in politics. The free hand with which railroads had given passes to legislators, governors, and other public officials was notorious and had been rigorously denounced long before the Interstate Commerce Commission was created. And yet the practice of putting under obligation to the railroads those who, through their public offices, could obtain favorable legislation, was allowed to continue.

A fourth limitation was the failure to include provisions that were essential to prevent certain kinds of obnoxious discrimination and to secure to all shippers equal facilities and accommodation. It had long been the practice for railroads to own coal mines and timber tracts and to transport over their roads the products thereof. It was natural, under such circumstances, that

¹ Report of the Interstate Commerce Commission, 1909, p. 6.

the railroads should place in the way of competitors every obstacle possible, in order to control the market themselves. The incentive to refuse cars, sidings, spurs, and branches to competitors was extremely strong. Consequently there continued even after the passage of the act a kind of discrimination which could not be abolished until the causes that made it so natural and so profitable had been removed.

Another serious limitation was the absence of provisions concerning the safety and welfare of employees. At the time the act was passed many railroads engaged in interstate commerce were using hand-brakes and pin-couplers, instead of air-brakes and automatic couplers, and in consequence hundreds of lives were needlessly sacrificed. The importance of a law requiring standard safety devices is seen from the fact that "the number of men killed in coupling and uncoupling cars for each 1,000 employed was 3 in 1893"—the year in which the Safety Appliance Law was enacted¹—"and 1 in 1908,"² after it had been in effect fifteen years. Although it is doubtless true that other causes operated to reduce the number of accidents, the effective administration of the Safety Appliance Act was unquestionably the most important factor. It is noteworthy in passing that this act which accomplished so much in preventing disability and death was sharply contested wherever possible by the railroad corporations.³

A final limitation of the act of 1887 was its failure to give to the commission any power to control the financial operations of the railroads. To protect prospective investors from worthless stocks, to prevent

¹ Fifty-second Congress, Second Sess., Chap. 196.

² Report of the Interstate Commerce Commission, 1909, p. 40.

³ Report of the Interstate Commerce Commission, 1908, pp. 38-39.

the overspeculation that inevitably leads to panic, to find a true basis on which to make rates, this power was indispensable.

The limitations which have been thus briefly discussed have all been removed by amendments to the original act. In 1893 the act requiring safety appliances was passed and was later strengthened by several amendments. (In 1906,¹ the Hepburn Act was passed, extending the jurisdiction of the commission over railroads operating wholly within a territory and including under its provisions express companies, pipe lines, sleeping-car companies, warehouses, refrigerating plants, and other facilities of commerce. The same act gave the commission power to fix maximum rates, prohibited passes, diminished discrimination by forbidding railroads to carry their own products (except timber) and authorized the commission to compel railroads to build spurs, switches, sidings, and branches wherever they seemed reasonably necessary.) Telephone, telegraph—including wireless—and cable companies were brought within the act in 1910,² and in 1913³ the power to fix the physical valuation and to investigate the financial operations of the roads was given. As a result of these amendments, the Interstate Commerce Commission now exercises effective control over practically all public utility corporations engaged in interstate commerce.

In calling attention to the limitations of the act of 1887 and in pointing out the great difficulty which the commission experienced in removing them, the important advantages that have flowed from this gradual evolution of the commission's authority should not be

¹34 United States Statutes, pt. 1, p. 584.

²36 United States Statutes, pt. 1, p. 539.

³37 United States Statutes, pt. 1, p. 701.

overlooked. In the beginning, instead of having a number of duties and responsibilities which, because of lack of experience and proper administrative organization, it could not adequately discharge, the commissioners had a chance to assimilate the few powers they did have and thoroughly to master their work. As a result, the commission has grown with its powers and has always been in advance of its opportunities. It has therefore won a degree of public confidence which many of the state commissions, especially the late ones, which have been created rather than developed, have been unable to inspire. Moreover, because every increase in power asked for by the commission has been bitterly contested by the railways, the commissioners have been obliged constantly to depend upon public opinion to induce Congress to take action. Besides adding to the confidence always inspired by close contact with public opinion against special interests, this long, slow process of amending the act has served to test every additional grant of power that has been made. The commissioners have been forced to show clearly and convincingly why requested powers were needed and precisely what evils they were designed to remove. This has had two most happy results. In the first place, the commission has been slow to ask for powers which it has not needed; and, in the second place, the public has been slow to disapprove requests when made. All in all, the commission has developed solidly and firmly and is now a vital part of the railroad system of the country.

As the gradual increase in the authority of the Interstate Commerce Commission is considered, the question naturally arises, To what extent will the commission's powers be carried? The answer to this question which many of the advocates of the progressive

movement make is, government ownership. Already the government has carried its control over railroad activities to such an extent that it has almost as much to do with their operation as the owners of the roads themselves. It prescribes changes in rates, it orders the latest safety appliances to be installed, it directs a greater number of cars to be run, it compels roads to build extensions, and may investigate the issue of stocks and bonds. To have two bodies exercising concurrent jurisdiction would seem in this case to be an economic waste. If the government, through its commission, can control most of the activities of the railroads, why not extend its authority still farther and have the government own them?

The movement toward government ownership of railroads, telephone, and telegraph lines and other quasi-public corporations is accelerated by the increasing willingness or perhaps a diminishing unwillingness on the part of railroad financiers to withdraw. Railroad investments are no longer as profitable as they were in the days when land grants were liberal, rates high, capitalization copiously watered, and operations uncontrolled. Railroad earnings are carefully analyzed today. Property is scientifically valued and profits are reduced to a minimum. There is spreading a new theory with respect to railroads and similar corporations; i. e., that they are not to be run for profit, but for service. The consequence of all this is that railroads complain that additional capital is hard to obtain and that what is now invested will gradually be withdrawn.

With the government becoming constantly better equipped to assume complete ownership of the railroads and with the railroads themselves becoming increasingly willing that such a step should be taken, the other difficulties that are commonly raised

against government ownership should not be allowed to stand in the way. The original cost, as is so often urged, would be great, even if a fair physical valuation of railroads were made and all watered stock and inflated capitalization removed. But it would be by no means impossible for the government to raise the money; and once convinced of the need of taking over the railroads, there would be little reason for not doing it. It would doubtless be inadvisable to attempt to buy up all the lines at once; but by a careful distribution of the process over a period of thirty, forty, or even fifty years, the change could be made without imposing any undue burdens. There would be this added advantage in such a plan that the profits of roads already acquired could be used to amortize the debt contracted and thus make easier the acquisition of additional lines.

A second objection sometimes raised against government ownership; i. e., that competent officials and employees could not be obtained because of the tendency to prostitute the entire undertaking to the spoils system and political preference, is more imaginary than real. There has never been any suspicion cast upon the motives or conduct of the members of the Interstate Commerce Commission and there is no reason why government ownership should work any change. The example of the post office and parcel post system is a constant refutation of the proposition that the government cannot run any enterprise with efficiency and economy. The character of the work of a governmental agency is determined almost entirely by the standards already set up and the demands of the public; and with the precedents already established in railroads and the exacting demands for good service that are made, there is little ground for the belief that there would be any

substantial deterioration in service under governmental control. As to the injurious effects of the railroads upon politics, they could scarcely be worse under public ownership than they have been and, in a measure, still are. It is no exaggeration to say that, for many years, large railroad systems dominated the politics of individual states and even whole sections of the country. The Southern Pacific in California, the New Haven in New England, the New York Central in New York, the Pennsylvania in Pennsylvania and New Jersey, are conspicuous examples of the extent to which railroads have carried their powers. Far from being worse, under public ownership, there are many reasons—as, for example, the absence of incentive to make profits, the removal of competition and of speculation—why the corrupting influence of railroads in politics should be considerably diminished. Certainly many of its immediate causes, such as the desire to prevent legislation of a damaging kind, and the attempt to pass laws granting special privileges, would no longer exist.

So far as the relation of the national government to railroads and other quasi-public corporations engaged in interstate commerce is concerned, therefore, the progressive movement recognizes the tendency since the creation of the Interstate Commerce Commission in 1887 toward greater governmental control. Although the movement does not urge immediate government ownership, it believes that everything is pointing in that direction. If the powers of the present Interstate Commerce Commission are increased in the future as steadily and as wisely as they have been in the past, there is no reason why a gradual transition from private to public ownership should not be made. The course to pursue is not to denounce government ownership as an unmitigated evil and an impossible chimera nor to

accept it as an unalloyed good and to insist on its immediate adoption; but rather to treat it as a definite goal and "to make haste slowly" in attaining it.

The national government, in dealing with the second great class of corporations, i. e., the industrial corporations, has followed a policy directly at variance with that which it has pursued in connection with the railroads. Instead of proceeding upon the assumption that there are advantages as well as disadvantages in large-scale production and that a definite analysis should be made with a view to determining how to eliminate the evil and conserve the good, the government has proceeded on the theory that all trusts and monopolies are harmful and ought to be destroyed. In adopting this policy, the federal government, as in the case of the railroads, found a precedent in many of the states. Just as the national government was influenced by the conclusions reached by several of the states that the most effective way to deal with the railroads was through commissions, so it was influenced by the conclusion of many of the states that the most effective way to deal with trusts and monopolies was to destroy them.

The inverse analogy between the attitude of government toward public utility corporations and its attitude toward industrial corporations extends not only to the purposes which the government had in view in both cases but also to the methods used to accomplish those purposes. In the case of the railroads, the government, starting with the proposition that the railroads must be developed for the public good rather than destroyed, established a commission with limited powers to accomplish that end. This commission, beginning with limited authority, has by degrees developed into an unusually effective instrument of control. In the case of the industrial corporations, the government, start-

ing with the proposition that industrial corporations, so far as they were monopolies and tended to restrain trade, should be destroyed rather than developed for the common good, passed a law making all combinations and monopolies in restraint of trade illegal and authorizing their dissolution. This law, seemingly a most formidable weapon with which to attack trusts and monopolies, has undergone an evolution that has made of it an uncertain, weak and, in some respects, useless statute.

The act passed by Congress in 1890 for the purpose of destroying combinations and monopolies and known popularly as the Sherman Anti-Trust Act, contained eight sections. Section 1 declared "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce . . . illegal"; and provided that "every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year or by both said punishments, in the discretion of the courts."¹ Section 2 applied the same prohibition and the same penalty to monopolies. Section 3 extended the application of the act to territories and the District of Columbia. Sections 4 and 5 described the procedure to be followed in enforcing the act. Section 6 authorized the confiscation of any property "owned under any contract or by any combination, or pursuant to any conspiracy. . . ." Section 7 gave to the person injured the right to recover "threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee." The last section, Section 8, defined the word "person"

¹ 26 United States Stat., C. 647.

or "persons" whenever used in the act to include corporations. Surely here was a broad, far-reaching, and comprehensive statute with which to control all industrial corporations that restrained trade.

It might be supposed that, after Congress had placed such a drastic law on the statute books, trusts, monopolies and other combinations in restraint of trade would quickly disappear. Such, however, was far from the case. In the first place, the Attorneys-General, who were authorized to commence suits under the act, seemed singularly indisposed to do so. During the period from the passage of the act in 1890 to the beginning of Roosevelt's administration in 1901, only eighteen suits were brought ¹ and although the number greatly increased from 1901 on, during the seven and a half years of Roosevelt's administration the total was only forty-four. Then, too, the law was not as effective as it promised to be because of the combinations against which the Attorneys-General decided to proceed. Although the act was freely invoked to suppress labor associations, against which there is some ground for believing it was never intended to be used, the large and particularly obnoxious corporations were allowed to continue and hundreds of new industrial combinations were formed. Then, too, the full force of the act was practically never used. For although provision was made for fine and imprisonment and the forfeiture of goods that were being transported in violation of the act, these penalties were seldom applied. And, finally, in certain cases, notably in the Knight case and the Greenhut case, the government failed because of technical mistakes in the indictment which a

¹ This does not include private suits brought under the Sherman Act.

more conscientious preparation and prosecution by the Attorney-General might have avoided.

The federal courts have, on the whole, given a liberal interpretation of the act. It is true that in some of the earlier cases in the Circuit Court a very narrow construction was placed upon the statute, robbing it of most of its force: but the decisions in those early cases when they reached the Supreme Court were, in most instances, overruled. While the lower court, therefore, held that "commerce" under the act meant the interchange of commodities and not transportation, the Supreme Court held that both were included; and while the lower court held that a restraint, to constitute a violation of the act, must be extraneous and unreasonable, the Supreme Court held that it need be only mutual and reasonable to come within the meaning of the statute.

Although the decisions of the Supreme Court have on the whole been liberal, three decisions particularly have come in for a good deal of criticism. In the case of the United States vs. the E. C. Knight Company,¹ it was charged by the government that the American Sugar Refining Company, a New Jersey corporation that controlled a large portion of the output of sugar in the United States, had combined with the E. C. Knight Company of Philadelphia, who were also large producers of sugar. The lower court had refused to sustain the indictment and the Supreme Court affirmed the lower court's decision, making a distinction between a monopoly of manufacture, which resulted in this case, and a monopoly in restraint of commerce or trade, against which the Sherman Act was aimed. In this case, although the facts showed that the two corporations as a result of the combina-

¹ 156 U. S. 1.

tion controlled over ninety per cent of the output of sugar, they did not show that any restraint of interstate commerce was caused thereby and, for that reason, the bill brought by the government was dismissed.

The two other decisions of the Supreme Court that have been severely attacked were handed down in the Standard Oil Company¹ and American Tobacco Company² cases. In those cases, although the court held that the two corporations had violated the provisions of the act and must be dissolved, it added what amounted to dicta to the effect that it is only "unreasonable" restraint of trade that the Sherman Act enjoins. These remarks were unnecessary to the decision, but they seemed to indicate a change of front on the part of the court, which, in the *Trans-Missouri* case, had distinctly stated that the unreasonableness of the restraint was immaterial and also to forecast an interpretation by the court that would greatly weaken the law.

There can be little question that the policy of the national government toward combinations, trusts, and monopolies, as that policy is revealed in the Sherman Act, has very largely failed. The failure to give the law its full effect by visiting upon offenders the penalties contained in it, the uncertainty of the courts as to its interpretation, the impossibility of stretching its meaning to cover all the devices that are used to evade it, the prevalence, in an aggravated form, of many of the abuses it was intended to remove, all show that after twenty-four years of experiment, the national government has found that its attempt to destroy big business not only has not destroyed it, but has failed to control it as well.

¹ 221 U. S. 1.

² 221 U. S. 160.

The principal trouble with the attempt of the government in dealing with industrial corporations has been the failure to make a proper analysis of the entire problem. In the first place, Congress failed to do what the courts were later forced to do; i. e., discriminate between reasonable and unreasonable restraint of trade and between cases where the penalty could and cases where it could not be strictly applied. If the Sherman Act had been construed in all its literalness, if it had included, as it says, every combination or contract in restraint of trade, practically all business between states would have had to cease. A contract entered into by a man in one state with a factory in another under the terms of which he was to receive a consignment of goods at the end of a given period, would become a restraint of trade to the extent of the goods involved. And, on the other hand, if the penalty had in all cases been strictly enforced, billions of dollars' worth of property would have been confiscated and hundreds of the country's most prominent men would have been thrown into jail.

In the second place, the government has taken it for granted that all monopolies are bad and that monopolies are all bad. It has failed to distinguish between a monopoly that is the logical and natural outgrowth of modern conditions, as, for example, the telephone and telegraph monopoly, and a monopoly fostered by artificial means, as, for example, the United States Steel Corporation or the Beef Trust. And, failing to recognize these artificial causes of monopolies, it has been unable to solve the problem because it has left out the most important factors. So, too, it has failed to consider that even a monopoly made possible by unnatural means, may under proper supervision have many advantages that may be turned to the com-

mon good. Reduced cost of production and of distribution, greater utilization of by-products, better organization, and better service may be taken advantage of even though some of the more objectionable features of monopolies cannot be tolerated.

In the third place, the government has overlooked the fact that in attempting to destroy all trusts and monopolies by legislative fiat, it is flying in the face of economic law and evolution. Concentration of capital and coöperative production on a large scale are just as inevitable to-day in many industries as the widening application of electricity in daily life. There is, of course, a limit beyond which this concentration of capital in large enterprises, because of the intricate organization needed, may not pay; and some prominent business men have expressed the opinion that that stage has already been reached. But it is only when that stage is reached, it is only when further combination ceases to be profitable that men will cease to combine. The advantages and disadvantages of trusts must be shown by experience; the mania for large-scale production, like any other disease, must run its course.

Another fallacy made by the government in accepting the Sherman Law as the proper remedy for curbing the trusts was in believing that a single law was sufficient to do away with combinations and monopolies. What really happened was the substitution of litigation for legislation as a means of control. Instead of having an administrative body to study the situation, determine the proper remedy to apply, and then ask Congress for authority to apply it, suits were brought sporadically against any corporation that seemed to need treatment and could stand it. Great corporations were unwilling to dissolve merely because there was

a law on the statute books which no one fully understood and which might never be used against them; they preferred to run the risk that the law was a threat rather than a weapon and that it would never be applied to them. Business, consequently, was conducted under a kind of sword of Damocles with now and then a snapping of the hair and a descent of the sword on some unfortunate corporation that happened to be directly underneath. Government and business have, therefore, been suspicious of one another because a mutual understanding has been impossible. In dealing with the railroads, the government gave notice and then imposed only a comparatively slight penalty for disobedience of its orders; in dealing with industrial corporations, no notice was given and the penalty for failing to anticipate the courts' interpretation of the law was to be dissolution and destruction.

After years of conflict between government and business, both have come to the conclusion that the best solution of the entire problem lies in a system of governmental regulation modeled after that now exercised by the Interstate Commerce Commission. President Wilson, in his message on corporations, urged the establishment of such a commission to be known as the Interstate Trade Commission to interpret and apply the law governing industrial corporations and to recommend additional legislation as it is needed. This proposition to establish a body to investigate and recommend legislation concerning corporations is not new. As early as 1903, Roosevelt, recognizing the inadequacy of the Sherman Law and feeling the necessity of adopting some measures to control industrial corporations, managed to have passed as a part of the act creating the Department of Commerce and Labor, a Bureau of Corporations. Although it

was handicapped by lack of power because public opinion was not strong enough at that time to force a reactionary Congress to grant it, the bureau did invaluable work in investigating such corporations as the Steel Trust, the Standard Oil Company and the American Tobacco Company.

With the information already gathered by its prototype at hand, the proposed Trade Commission should undertake as its first problem, the problem that the Sherman Law completely overlooked, i. e., the problem of analysis. One task of the commission will be to define the limits of national action. There are many corporation abuses that no national commission can remove because Congress itself has not the power to delegate for that purpose. Monopoly of production where the production is entirely within one state, overproduction causing a fall in prices and a laying off of labor, the conditions under which men and women work—these are some of the things that a commission cannot regulate because they do not come under the national jurisdiction.

A second problem in analysis will be to determine how many evils are due to monopolies and trusts and how many to other causes. Unsound securities, improper investments, and many other evils usually ascribed to combination of capital will be found to be due to the lax incorporation laws of many of the states. These evils can best be removed by passing legislation compelling all corporations engaged in interstate commerce to incorporate under the national government. This proposal has already been made a number of times and now would seem to be an excellent time to put it into effect.

In the third place, the commission will have to distinguish natural from artificial monopolies and

trusts, discover the props that support the latter, and remove them. Three of these props long in evidence and recognizable at the present time are the tariff, the railroads, and patents. By taking refuge behind the wall of protection raised by a high tariff, or by obtaining rebates and other favors from railroads that its less fortunate rivals cannot obtain, or by the protection of a patent law giving it the exclusive right of production over a period of years, a corporation that could not otherwise become a monopoly may choke off competition and gain control of an industry.

The result of a proper analysis by a Trade Commission should be to show the national government the industries over which it should exercise control, as well as the extent to which and the methods by which such control should be exercised. To a certain extent the Interstate Trade Commission will begin in 1915 to do the work which the Interstate Commerce Commission began in 1887. Whether it will go as far in its recommendations and receive as substantial additions to its powers in the coming twenty-seven years as the Interstate Commerce Commission has in the past twenty-seven remains to be seen. If the tendency of the new commission is in the same general direction as that of the old one—and there is no indication that it will not be—the ownership by the national government of those industries that are national in their scope and character, though remote, is by no means impossible. Many of the problems with which the government will have to deal in regulating the industrial corporations will be much more difficult than problems of the same general nature in connection with railroads. Fixing the rate that is to be charged between two points on a railroad is much easier than fixing the price that is to be charged for a gallon of oil or a pound of beef; and

determining the number of cars to be used on a given route is simple compared with fixing the number of shoes to be manufactured in a year. And yet complex as the problem of close government supervision and regulation undoubtedly will be, it must be undertaken and undertaken now. There can be no turning backward. If the end is to be government ownership, well and good. If the powers of the government are increased gradually and carefully, current problems can be satisfactorily solved; and when, if ever, government ownership comes, it will come when the nation is ready for it and when it will do little harm.

A third class of corporations over which the progressive movement advocates a greater measure of governmental control are the banking corporations. Although the coinage of money has always been recognized in this country as a function to be exercised by the federal government and by it alone, the coinage of credit, upon which by far the greater part of the business of the country is done, has been left to private individuals. And although there has been established a strong central institution, the United States Treasury, with sub-treasuries in several important cities through which the currency of the country may be distributed, the distribution of credit has been allowed to fall into the hands of a few to be used by them largely for their own purposes. Through the interlocking of directorates, i. e., the placing of the same men on the board of directors in a number of different banks and trust companies, it has been possible to concentrate in the hands of these men the control of a great part of the available credit of the country. To such an extent has this been carried that in grave emergencies, as in the panic of 1893 and in that of 1907, when the national government was helpless to relieve the stringency and

restore confidence, a private banking house that controlled a great portion of the country's credit was called in to help; and, what is more significant, did help. This concentration of credit which makes private banking houses more powerful than the government itself, has given rise to the use of the expression "money trust" and has evoked from the public a demand for a change in the national banking system that will place credit money as well as other money under the government's control.

The banking system which was in effect prior to the passage of the Glass-Owen law in 1913 was defective in nearly every essential feature. In the first place it was lacking in national leadership. There were about twenty thousand national banks scattered over the entire country, no one of which was sufficiently strong to assume control or direct the others in time of panic. In fact, instead of being mutually helpful, just as soon as struggle set in, they became keen competitors for currency to save themselves. Nowhere in this country was there a banking institution that occupied the position that the Bank of England occupies in England, the Bank of Germany in Germany, or the Canadian Bank in Canada. In each of those countries a panic is practically impossible because the credit of the entire country stands ready to back up the central bank. If more reserves are needed, the central bank supplies them; if there is danger of overspeculation or undue withdrawal of gold from the country, the central bank adjusts the rate of discount. And beyond all that such banks actually do, they aid enormously in times of stress because they inspire the confidence for want of which most panics are precipitated.

A second defect of the old system was the dangerous concentration of reserves in a few large centers,

The cities of the country, for the purpose of classifying banks, were divided into central reserve cities, reserve cities, and country bank towns. The three central reserve cities were New York, Chicago, and St. Louis; the reserve cities included the smaller cities, such as Kansas City, San Francisco, Cleveland, etc.; and the rest were country bank towns. National banks in country bank towns were required by the law in operation before the Glass-Owen bill was passed, to keep fifteen per cent. of their deposits on reserve. Of this fifteen per cent. six per cent. had to be kept in their own vaults while the other nine per cent. might be placed to their credit in national banks in reserve cities. Reserve city banks were required to keep twenty-five per cent. in reserve, of which twelve and a half per cent. might be kept in their own vaults and twelve and a half in a national bank in one of the three central reserve cities. National banks in central reserve cities were required to keep twenty-five per cent. of their deposits in cash in their own vaults. Under this system, at a time of the year when currency was needed all over the country at the same time, the country banks would demand their deposits from their bankers in the reserve cities. The reserve city banks, likewise, to meet the demands made upon them, would ask for their deposits from the banks in the three central reserve cities. The entire stress tended, therefore, to rest upon the individual banks in New York, Chicago, and St. Louis. Not only were the banks in those cities expected to meet the demands of the reserve city banks and through them of the country banks, but at the slightest indication of panic, they were besieged by their own depositors. The inevitable result was the collapse of several strong banks in central reserve cities and the beginning of a severe panic.

Another defect of the system was the inelasticity of the currency. In order to increase the currency most countries allow recognized banks to issue notes of their own under prescribed conditions. If those notes can be freely and safely increased when they are needed, as in the autumn of the year when crops must be moved, and can be easily removed from circulation when they are no longer required, the currency is said to be elastic. Under our former banking system the currency, far from being elastic, was quite inelastic. In order to issue bank notes up to a certain amount, it was necessary for a national bank to purchase United States bonds up to the same amount and deposit them in the United States Treasury as security. The result was that in times of stringency, when there was a great demand for currency, both to pay out to depositors and to keep on reserve in vaults, the banks were little inclined to pay it out for United States bonds in order to issue bank notes. On the other hand, when currency was plentiful and banks had a fair supply of cash in their vaults, there was strong inducement to invest some of the cash in bonds and issue bank notes against them.

The Glass-Owen bill, passed in December, 1913, aims to correct these three fundamental defects in the old banking system. Instead of a system with twenty thousand banks, no one of which is in control, the new law provides for a Federal Reserve Board at Washington to consist of the Secretary of the Treasury, the Comptroller of the Currency and five other members appointed by the President, and to exercise final control over the entire system. In time of stress, this Federal Reserve Board can compel one regional bank to loan to another; can remove or alter the restrictions placed upon the banks with regard to reserves; and can even remove directors of the regional banks. This

Federal Reserve Board will be aided in its work by an Advisory Council composed of one representative from each reserve district. The Advisory Council will meet in Washington, confer with the members of the Federal Reserve Board and make specific recommendations. Such a system gives vastly more leadership than the present plan.

Another great improvement made by the Glass-Owen bill is with regard to the concentration of reserves. Under the old system, as was pointed out, the entire strain tended to fall on three cities and there was no source to which those cities could turn for relief. The Glass-Owen law provides for the establishment by the Federal Reserve Board of twelve regional banks distributed throughout the country. National banks are required to take stock in the regional banks and, under certain conditions, state banks and even the public may do so. These regional banks will do business, with one or two exceptions, wholly with the so-called members, i. e., the individual banks within the district covered by a regional bank that have subscribed to the stock of the regional bank. These member banks are required to place a certain per cent. of their deposits on reserve in the regional banks. Country banks must keep on reserve twelve per cent. of demand deposits and five per cent. of time deposits. Ultimately ¹ five-twelfths of the total reserve will be kept in these regional banks. Reserve city banks are required to keep fifteen per cent. of demand deposits and five per cent. of time deposits. Of this total reserve, ultimately two-fifths will be kept on deposit in the regional banks. Central reserve banks must keep on deposit eighteen per cent. of demand deposits and five per cent. of time

¹ Provision is made for a gradual transfer of reserves to avoid unsettling business too much.

deposits. Seven-eighteenths of the total must be placed in regional banks. These regional banks will then act as reservoirs and in time of stringency will aid their member banks. They will, under certain conditions, rediscount the commercial paper of member banks and thus enable them to obtain the necessary currency to meet the demands made upon them.

The Glass-Owen law meets the third defect—inelasticity of currency—of the system which it supplants by providing for a new kind of currency called treasury notes. When there is need of increasing the currency, regional banks, by depositing with one of their directors, known as the federal reserve agent, commercial paper which it has discounted plus forty per cent. in gold, may issue treasury notes to the face value of the paper. When the currency is no longer needed, it is expected that the notes will be withdrawn by the regional banks as quickly as possible so as to release the forty per cent. gold reserve which it must set aside. In any case, these treasury notes become the obligation of the government and are payable at the United States Treasury. In extreme emergencies, provision may be made for a suspension of the restrictions surrounding the issue by the regional banks of these treasury notes until the crisis has passed.

There can be no question that the national government in enacting the Glass-Owen bill, by eliminating the three grave defects in our former banking system, has taken a long step in the direction of better governmental control of banking corporations and the release of credit from the control of a few. While it is doubtless true that the law is the best one that could be enacted at the time, opinion is somewhat divided as to whether it is the best bill that can be adopted in this country. Just as in the case of the railroad and indus-

trial corporations, so in the case of banking corporations, the tendency is toward a large increase in governmental control. And, as in the case of the railroads and industrial corporations, the goal toward which things are tending seems to be government ownership or something closely approaching it, so in the case of the banks, the goal seems to be a central bank modeled after those of Germany, France, England, Japan, Canada, and other countries. Such a bank would do much more to inspire confidence than twelve regional banks with the Federal Reserve Board and the Advisory Council of the present plan and could better guard against the inflation and over-expansion of which many have expressed fears under the present system. There would seem to be little excuse for agitating the question of a central bank at the present time and almost as little for passing adverse criticisms upon the present law. Its weaknesses will unfailingly develop as it is subject to practical tests and it can then be amended. But in amending and improving upon it, Congress should go forward and not backward; and forward will be in the direction of a strong government central bank rather than away from it.

The conclusion which one must inevitably draw from this discussion of the present status of railroad, industrial, and banking corporations in their relation to government is that the day of destructive criticism and attack has passed and that the country is entering upon a period of constructive suggestion and readjustment. The progressive movement emphasizes the need of extending governmental control as rapidly as circumstances will permit, to the end that corporations may occupy a subordinate rather than a dominant position in our national political life. This first problem, in a sense a negative one, the problem of remo-

ing special influence so far as it is exercised by corporations upon political life, is the one that it is most important to solve at the present time. When that is done, when the nation has caught its breath after the really severe struggle it has made to conquer, it will be time to take up the larger and more positive problem of finding new ways of using corporations for the general good.

CHAPTER VIII

MEASURES OF GOVERNMENTAL CONTROL

THE second thing which the progressive movement in the nation aims to do is to modify the structure of the federal government so as to make it more directly responsive to the will of the majority. The experience of over a century and a quarter of national life has shown very clearly that because of certain features of its structure, the federal government is peculiarly susceptible to control by special interests. It is evident, moreover, from the exhaustive studies that have been made that the most important obstacles to majority rule in the nation were put into the federal constitution by its framers for that purpose. The selection of the President by means of an electoral college, the election of senators by the legislatures of the states, the appointment of Supreme Court judges for life with power to declare laws unconstitutional, the difficult methods prescribed for amending the constitution, all these provisions were inserted in the constitution in the beginning to curb the power of the people. Other checks have developed along with the constitution, such as the elaborate rules in Congress which make it possible for small committees to control all important legislation, the assumption by the Supreme Court of the power to modify statutes and to amend the constitution by judicial interpretation and the rise of political machines

that control the nomination of President and Vice-President in comparatively small conventions. These obstacles in the way of government by the majority—both those that were purposely put into the constitution and those that have grown up with it—the progressive movement proposes to remove.

In advocating the removal of these checks and a larger participation in government by the majority of the people, the progressive movement does not seek to abolish representative government and introduce a pure democracy in its stead. Such a proposal in a country with 100,000,000 inhabitants scattered over an area of 3,000,000 square miles would be little short of absurd. What the progressive movement aims to do is rather to restore representative government by correcting the defects in the national government that enable vested interests and a small minority to control. With the telephone, the telegraph, the railroad, the newspaper, and the magazine, with the spread of education and the increase in the intelligence of the average voter, there is every reason why the people should exert more and more influence on government rather than less and less. There is every reason why a majority of the people, expressing their opinions in an open, legal way should control the acts of presidents, judges, and legislators rather than that they should allow corporations and banking interests to control them in a secret and illegal way. To make the federal government more democratic by eliminating the impediments to popular rule is not to make it less representative; it is merely to change the persons represented.

One of the provisions of the constitution that makes it difficult for the people to make their influence felt is the provision concerning the methods of proposing and passing amendments. On their face, without any con-

sideration of the way they have worked out in practice, the methods provided seem to make any amendment to the constitution except on a minor matter or under extraordinary circumstances almost impossible. Merely to propose an amendment requires the consent of two-thirds of the members of Congress or of two-thirds of the state legislatures; while, to adopt one, the consent of three-fourths of the states is necessary. The full force of the provision becomes apparent when we consider not how large a majority is necessary to propose and ratify an amendment, but how small a minority may oppose and block one. Seventeen of the least populous states, such as Nevada, Wyoming, Delaware, etc., with a total population of about 7,000,000, can prevent the other ninety odd millions from proposing amendments; while thirteen states, with a total population of about 4,500,000, can prevent their adoption. The situation becomes even worse when it is remembered that in most instances the amendments are ratified by the state legislatures and not by the people and that the majorities in the smaller house of each of the thirteen smallest states can prevent the entire nation from changing its fundamental law.

There is nothing new in these objections to the provisions of the constitution concerning the passage of amendments. Practically all of them were raised in 1789, when the constitution was before the people for their approval. But we have, in addition to the theoretical objections that were raised then, practical experience to guide us; and that practical experience only confirms the suspicion entertained by many in 1789 that the provisions for altering the federal constitution were designed to hinder rather than to facilitate the passage of amendments. An analysis of the seventeen amendments already passed shows that because of their

character or the circumstances under which they were passed, they do not weaken at all the proposition that amendments are almost impossible to obtain; but on the contrary confirm it. The first twelve amendments were passed before 1805. Of these, the first ten constituted a kind of Bill of Rights, upon the passing of which some of the colonies conditioned the adoption by them of the constitution. The eleventh amendment came as a result of the case of *Chisholm v. the State of Georgia* and added to the constitution a provision which most of the states thought was already there by implication; i. e., that a state could not be sued by an individual without its own consent. The twelfth amendment was of minor importance, modifying the method of choosing the President and Vice-President. A civil war was necessary to add the thirteenth, fourteenth, and fifteenth. Of the first fifteen amendments, therefore, it is fair to say that not one was passed on an important question in time of peace.¹

The recent passage of the sixteenth² and seventeenth³ amendments, although at first sight it seems to impair the argument for an easier method to amend the constitution, upon examination rather strengthens it. The sixteenth amendment was first introduced in 1896 just after the Supreme Court declared the income tax unconstitutional.⁴ Although up to that time practically no one had questioned the constitutionality of the tax; although the Supreme Court itself had on several occasions declared an income tax constitutional; although most people undoubtedly favored the imposition of such a tax; it took seventeen years to pass a consti-

¹ Smith, *The Spirit of American Government*, pp. 40 *et seq.*

² The income tax amendment.

³ Direct election of United States senators amendment.

⁴ In *Pollock v. Farmers' Loan and Trust Co.*, 158 U. S. 601.

tutional amendment giving Congress the power to levy it. The situation with regard to the seventeenth amendment was even worse. The resolution to amend the constitution so as to provide for the election of United States senators by a direct vote was introduced in Congress for the first time in 1893 and was before the country constantly until the amendment was ratified in 1913. Few persons opposed the direct election of senators and yet the difficulty of obtaining the consent of three-fourths of the states was so great that for two decades the will of a majority of the people was thwarted.

The impracticability of the present method is well illustrated by the fact that some states found it easier to evolve an intricate scheme to elect United States senators by a direct vote of the people than to obtain the right by constitutional amendment. Instead of allowing the state legislators to exercise their own choice for United States senators, these states bound them to elect the candidates who had received the highest number of votes at the polls. The plan thus worked out made the duty of the legislators in selecting a United States senator closely analogous to that of the members of the electoral college in choosing a President. It is quite probable that, if no amendment had been passed on the subject, most of the states would ultimately have provided for the direct election of United State senators by this device. As it is, several states, by perfecting the scheme and making the preference of the people binding upon the legislators and thus insuring direct election, demonstrated that it was easier to make fundamental changes in the structure of government by evading the constitution than by amending it.

These serious limitations on the power of a majority of the people to amend the national constitution, the

progressive movement proposes to remove by substituting for the present cumbersome methods a simple one that will make amendments more readily obtainable.

One plan typical of several that have been suggested to effect this change was introduced in Congress in 1913 in the form of a resolution to add Amendment XVIII to the constitution. The resolution follows:

“Amendments to this constitution may be proposed by the Congress whenever an absolute majority of both Houses in the same session of Congress shall deem it necessary, or by conventions to be called as hereinafter set forth, or by not less than one-fourth of the states, provided the states proposing such amendments contain not less than one-fourth of the population of all the states as shown by the last preceding decennial enumeration. Such proposal by the states may be made either by the legislatures thereof, or by the vote of a majority of the electors voting thereon in any state making provision for the submission of such proposal to popular vote. Amendments proposed, as above provided, shall be submitted at the next ensuing election of representatives in each of the several states, directly to the electors qualified to vote for the election of representatives in accordance with the regulations of each of the states where provision for such vote is made by the state. In default of state regulation thereof the vote upon proposed constitutional amendments shall be taken in such manner as the Congress shall provide. If, in the majority of the states, a majority of the electors voting thereon approve the proposed amendments, and, if the majority of all the electors voting thereon shall also approve the proposed

amendments, they shall be valid to all intents and purposes as part of this constitution.

"The Congress shall by appropriate legislation provide for the holding of a convention in the year 1920, and every 30 years thereafter, for proposing amendments to this constitution."¹

That the proposed plan would make the addition of amendments much easier than at present is unquestionable. In fact, the objection that is almost certain to be raised against it is that it is too easy to be safe. There would seem to be little need, however, for apprehension on that score. If sufficient time elapses between the proposal of amendments by the states and the ratification at the polls; if the fullest publicity and opportunity for discussion are given; and if a majority of the voters scattered over a majority of the states then approve, the amendments would seem to be desired by the people as a whole. Besides, there is nothing inherently objectionable in allowing a constitution to be amended easily. In a country where the fundamental law is a written constitution, the extent to which the people control is determined very largely by the ease or difficulty with which they can make changes in that constitution. And, on the other hand, if a small minority can block any amendments, that minority is almost certain to be dominated by special interests for their own ends. There is an added reason for simplifying the present method of amending the constitution in the rapidly changing conditions of modern society. In 1800, fifteen or twenty years was not a long time to wait to put a reform into effect. To-day, when events move so swiftly, fifteen or twenty years are like a generation. If the law proposed to-day to meet present conditions cannot be passed

¹ Introduced as House Joint Resolution 95, on June 10, 1913, in the Sixty-third Congress, First Session.

until fifteen or twenty years hence, when conditions will have become different, it will be inadequate and in some cases almost useless. Under such a system government ceases to be responsive to the people, the constitution tends to be broken or evaded, and a revolution, peaceful or violent, becomes more than a bare possibility.

The proceedings of the Republican National Convention in 1912—and to a less extent those of the Democratic National Convention of the same year—brought home to the people more strikingly than ever before the grave dangers that lie in allowing a comparatively few irresponsible delegates to nominate candidates for President and Vice-President. In both conventions, although it would probably be impossible to prove fraud legally, it is quite certain that sharp practices were used and that the people were not fairly represented. No one seriously contends that the vote of the delegates at Chicago reflected the wishes of a majority of the members of the Republican party; while in Baltimore the spectacle of a political boss casting New York's ninety votes for Clark against the wishes of the Democratic voters of that state, and even against the wishes of a strong minority of the delegation, was little short of disgraceful.

Delegates to national party conventions at present are chosen either by state conventions or by the people at primary elections. Of those elected at the primaries some are instructed to vote for designated candidates, while others receive no instructions at all. Under the plan of choosing delegates in state conventions—and the majority of delegates are nominated in this way at present—the chance that the people will be represented is slight. In the first place, the unknown and rather weak delegates to these state conventions are easily in-

duced to vote for any delegates to the national convention that the boss or other representative of special interests may dictate. These "hand-picked" delegates to the national convention are in turn easily manipulated and induced to vote for machine men for candidates for President and Vice-President. In the whole process public opinion is made effective only with the greatest difficulty. Delegates to the state and national conventions are obscure, and little interest is taken in them. It is safe to say that not one voter in fifty knows the name of the man who represents him in the national convention or could tell for which candidate the delegate voted. And, even if he did know, it would do little or no good, for delegates are irresponsible, their duties ending with the convention in which they sit.

The progressive movement aims to abolish the national party conventions as nominating bodies, leaving to them only the function of making the party platforms; and, at the same time, to give to the people through a system of primaries the power to nominate candidates for President and Vice-President. Under the proposed primaries, known as presidential preference primaries, delegates to national conventions would be chosen directly by the people and would be pledged to vote for designated candidates for President and Vice-President. Thus, of ninety delegates from New York to a national convention, twenty might be instructed to vote for A, twenty for B, and the rest for C. To make the possibility of a deadlock as remote as possible, not only first but second and third choices may be indicated. Thus, if no candidate is chosen after all the first choice votes have been cast, the candidate receiving the smallest number of first choice votes would be eliminated and the second choice of those who voted

for him for first choice would be distributed among the remaining candidates. This process can be continued until some candidate receives a majority of the votes.

Seventeen states ¹ have already adopted some form of presidential preference primaries; but the system of choices cannot be thoroughly worked out unless all states choose their delegates under the same plan. Under the present incomplete plan, the tendency is to bind the delegates either too little or too much. The voters of a state, for example, may instruct their delegates to vote for a particular candidate. If it becomes apparent on the first ballot that that candidate cannot win, the delegates may continue to throw their votes away in a hopeless cause or cast their instructions to the winds and vote for whom they choose. In either case the real intent of the primaries is defeated. Under a well-devised scheme of first, second, and even third choices, binding all states alike, it would be hard to conceive a situation in which the delegates would have to go beyond the designations of the people to obtain a candidate.

The progressive movement aims to give to the voters not only the power to nominate candidates for President and Vice-President directly, but also the power to elect them directly. The people of the United States have become so accustomed to the method of election of the President and Vice-President through the electoral college that they fail to recognize it as a political anomaly and are not conscious of the rather important advantages that would result if it were abolished. There is no reason why Presidents and Vice-Presidents to-day should be elected by an electoral college save that the

¹ California, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota and Wisconsin.

constitution is difficult to amend and the people are inert. Theoretically, it is extremely incongruous for voters to cast their ballots for men who have no other duty than to journey to the different state capitols and cast their votes for candidates already as good as elected.

There are several important advantages besides that of removing an atrophied body to be gained by abolishing the electoral college. In the first place, it would be a step in the direction of breaking up the Solid South. For years the Republican party has made little or no effort to win votes in the southern states because the Democrats were always certain to obtain more popular votes and thus win the entire electoral vote. If a majority of the popular votes determined the election, it would pay the Progressive or Republican party to canvass every state, because the votes gained, however few, would help to swell the total in the other states.

In the second place, the present tendency to concentrate the campaign in a few pivotal or doubtful states would not be so pronounced. Both parties now regard certain states as "safe"; i. e., a majority of the voters can be counted on to vote the same ticket in every election. So some states are Democratic and others Republican. The incentive to carry the campaign into those states is very slight. A few thousand popular votes one way or the other will not change the electoral vote at all. The result is that two or three states become the storm-center of the entire campaign. The story is told of a small politician in one of the districts of New York City who boasted that he could control the outcome of a national election. His explanation was that he could produce enough votes in his district to swing the popular vote of New York State in favor of his party; and, since New York's electoral vote was usually decisive,

he claimed that he could decide the national election. While the story is probably apocryphal and the claim doubtless exaggerated, it is true as a general proposition that special influence and corruption can work most effectively when they can concentrate on a few crucial points. With the removal of the electoral college and the consequent increased importance of the individual vote all over the country, these crucial points would be fewer and more difficult to find.

A third advantage that would follow the modification of the present system of electing the President would be to make it impossible for one candidate to be elected over another who had received a higher number of popular votes. Theoretically, such a situation is quite possible. The defeated candidate might carry many states with few electoral votes, such as Delaware, Vermont, Alabama, etc., by overwhelming majorities and yet lose by a few votes in such states as New York, Pennsylvania, and Illinois. Precisely this situation has already arisen in two national campaigns. In 1876 Tilden was defeated for the presidency by one electoral vote, although he received 250,000 more popular votes than his successful competitor, Hayes. Again in 1888, although Cleveland polled 98,000 more popular votes than Harrison, the latter was elected by the electoral college by a majority of sixty-five votes.

An important step was taken in the direction of greater control by the people over the legislative branch of the national government when the amendment providing for the direct election of United States senators was ratified by the necessary three-fourths of the states. Whether the change in the method of election will result in a stronger and more representative body of senators remains to be seen. It would seem, however, that the change must be for the better. For years the Sen-

ate was composed largely of men whose private interests made them conspicuously unfit to represent the people and whose practices evoked the keen observation by Mr. Bryce that "some, an increasing number, are senators because they are rich; a few are rich because they are senators."¹ Railroads, industrial corporations, and "big business" in general spent thousands of dollars to send men to the United States Senate to "protect their interests." If, with the power in their hands to send men truly representative of their own interests, the people continue to send men of the type that have largely made up the Senate for the past quarter of a century, there will at least be the satisfaction of knowing that the responsibility is theirs and that the ability of the people to govern themselves has been tested in an important particular and found wanting.

In spite of the fact that all the members of the national legislature are now elected directly by the people, there is at least one vital reform that needs to be made to bring the legislative branch of the national government into closer contact with the people and public opinion. To conduct the vast volume of business that comes before it, Congress of necessity must resort to committees. As soon as a bill has been introduced, it is referred to the proper committee for investigation and report. These committees through their ability to withhold a bill, to report it adversely, or to modify it in such a way that its true character is changed, become all-powerful. It is often quite possible, even where both branches of the legislature are progressive, for a small minority by proper manipulation of committees to block sound legislation and even, in some instances, to put through pernicious laws.

The character of the influence that the committees

¹ *American Commonwealth* (abridged), p. 89.

exercise upon legislation depends chiefly upon the method by which appointments to them are made and the way in which they operate. Until recently committees in the House of Representatives were appointed by the Speaker. With this power, Cannon made his influence over the affairs of the country second only to that of the President. Bills were amended, "killed" or reported as he dictated. Practically no one could put an important bill through without his approval. This practice was changed after the revolt against Cannon in 1910 and committee appointments are now made by the House as a whole. In order to check still further the power of the Speaker and to prevent the domination of legislation by him, the House rules also provide that the Speaker may not be elected a member of the important Committee on Rules. The practice with regard to committee appointments in the Senate is much the same as that which obtains in the House. Committee appointments are made by a kind of "steering committee," subject, however, to the approval of the party caucus. In both Houses at present, therefore, committee appointments are made, in the last analysis, by the party caucus, and, although this is an improvement over the old method of appointment by the chair which gave Speakers of the House so much power, the new method is open to abuse. Party caucuses are secret and are apt to be controlled by a few. A matter of so grave importance to legislation as the selection of committees should be subject to the widest publicity and the full influence of public opinion.

As important as the method of appointing the members of committees is the way in which the committees conduct their business. It has long been the practice for committees in discussing important legislation to do so behind closed doors. Lobbyists and others especially

interested in the bills before the committees are admitted and allowed to present their arguments, but the general public knows nothing of what goes on. The progressive movement favors giving the widest publicity to the deliberations of committees, with the exception, of course, of those few cases where secrecy is absolutely necessary. The public is entitled to know the course of argument followed in the committee room where the fate of the bill is really decided and to know the arguments that guide committees in making recommendations.

With senators and members of the House of Representatives elected by the people; with the committees of these two bodies elected by the representatives of the people; with the work of the committees and of the two Houses open to public scrutiny and public opinion; the people will be in a fair way to control the legislative branch of the federal government.

It is a singular fact in our political life that the judiciary, which occupies the most important position of the three branches of government, is least subject to popular control. In addition to the great power which it is ordinarily supposed to have; i. e., the power to pass as the court of last resort on questions arising under the constitution, the Supreme Court exercises the right by judicial interpretation to alter acts of Congress, to declare statutes unconstitutional, and to amend the federal constitution. In the famous *Standard Oil*¹ and *Tobacco* cases, as Justice Harlan pointed out in his able dissenting opinion, the Supreme Court read into the Sherman Anti-Trust Act the word "unreasonable" which was never intended by the framers of the law to be used. In a number of cases, notably those involving the question of the reasonableness of railroad rates im-

¹ 221 U. S., 1.

posed by state commissions, the Supreme Court has amended Article XIV of the federal constitution to read "nor shall any state deprive any person of life, liberty or property without due process of law *and without giving just compensation.*"¹

Most important of all its powers, however, is the power to declare a law unconstitutional. By means of this power it can nullify almost any act of Congress as well as those of all the states if they are brought into the federal courts. Even if this authority were exercised with the greatest honesty—and it must be admitted that on the whole it has been so exercised—it would be contrary to the spirit of democratic government to give a small body of men such unusual power. When it is considered, too, that with the present difficult method of amending the constitution for the Supreme Court to declare a law unconstitutional is tantamount to forcing the country to wait fifteen or twenty years to obtain the right to pass it, the tremendous importance of the Supreme Court and its potential influence for good or evil become apparent.

To control this powerful instrument of government, the people possess very limited means. In fact, the framers of the constitution planned to place the Supreme Court as far as possible beyond the influence of public opinion. To that end, provision was made for the appointment of judges for life by the President, who in turn was to be elected by an electoral college made up of the propertied and educated men; and with the advice and consent of a Senate chosen by state legislatures. At no point were the people directly to touch the Supreme Court.

To establish this point of contact, two measures have

¹ See article by Jesse F. Orton, in *The Independent*, December 5, 1912.

been suggested: the recall of judges and the recall of judicial decisions that declare a law unconstitutional. The purpose of the first of these two measures is to give to the people the power to remove from office judges who by their decisions have shown, not necessarily that they are dishonest and corrupt, but that they are out of touch with enlightened public opinion. The purpose of the second is to give the people the final authority to decide what shall be the fundamental law of the land.

The recall of judges in the nation was advocated by many progressive leaders as a check upon the autocratic power of the Supreme Court after it had been adopted with success in several of the states; but a full discussion of the merits and practicability of the plan has developed some objections which make it questionable whether it would be wise to apply it to the federal judges. The first of these objections is the difficulty of establishing a fair basis for initiating a recall election because of the vast area over which the plan would operate. Usually recall elections are set in motion by petitions signed by a certain percentage or an absolute number of the voters. In the nation it would be next to impossible to fix a percentage or a number that would not be either so high that the voters could not call elections with reasonable ease or so low that the system would not be used for petty and partisan purposes. As a substitute for the usual petition, it might be provided that automatically once in a given period, as for example every fourth year, the question as to whether there should be held an election to recall the judges of the Supreme Court should be presented to the people at a Congressional election. If a majority voted in favor of such a proposal, an election might be held the following year, at which the names of all the members of the Supreme Court would be submitted with the direction to vote

“yes” or “no” before each name to signify approval or disapproval of the recall of that judge. If, in the case of any judge, a majority voted in favor of his recall, he would be removed and the President would then appoint his successor. But even such a method would be an unsatisfactory one.

In the case of federal judges serving in a limited area, as, for example, judges of district courts, the problem of instituting the recall by petitions would not be so difficult. A certain percentage of the voters of the district in which the judge served could be permitted to call the election and the adverse vote of a majority of those voting would be sufficient to remove the judge. At best, however, either in the case of the Supreme Court judges or of the judges of the inferior federal courts, the problem of working out a fair method of calling an election is a difficult one—so difficult that the desirability of undertaking it at all is open to serious question.

The second measure suggested to give the people greater control over the federal judiciary, i. e., the recall of judicial decisions that declare a law unconstitutional, seems to be more practicable; and, it may be added, more urgently needed. The character of the judges that have sat in the Supreme Court of the United States has, on the whole, been high. Public opinion and tradition have combined to obtain men of ability, learning, and character. Charges of corruption and dishonesty have been practically negligible. What is needed therefore is not a system, at best exceedingly difficult to operate with fairness, to remove corrupt and dishonest judges from office, but a system that can be easily operated to check an abusive exercise of the tremendous powers that belong to a court organized as our Supreme Court is.

Of all the ways in which the Supreme Court can

thwart the will of the people, that of declaring laws unconstitutional is the most effective. This is especially true when the defect goes to the heart of the law and requires a constitutional amendment to remove it. The decision of the Supreme Court in the Income Tax case in 1895 postponed the imposition of an income tax eighteen years and cost the country millions of dollars in revenue. The decision of the same court in the Southern Pacific Railroad Company case, in which it was held that the Southern Pacific came within the meaning of the fourteenth amendment and that any greater tax placed upon it than was placed upon other individuals was unconstitutional, became a bulwark of special and corporate interests and helped the Southern Pacific Railroad Company in its spoliation of the State of California. It is on such questions as these that the progressive movement believes that the people should have the right to disagree with the Supreme Court's interpretation of the fundamental law. With a system providing for the recall of judicial decisions in effect, every time the Supreme Court declared a law unconstitutional, an automatic appeal would be made to the people at the next general election. At that election, voters would vote "yes" or "no," affirming or reversing the court's decree. In some cases, a reversal of the Supreme Court by the people would involve a mere difference of interpretation of the constitution; in others, it would be tantamount to adding an amendment to it.

As was intimated above, such a plan for recalling judicial decisions that declare laws unconstitutional would probably be a sufficient modification of the machinery of the federal government, so far as the judiciary is concerned, to secure to the people a larger measure of control. If, with this scheme in operation, the courts still failed to respond to public opinion, some method

of recalling the judges themselves might be worked out.

With a sufficient extension of the powers of the national government over corporations to insure the removal of organized special influence from the national government, and with the modifications of the three departments of the federal government suggested in this chapter put into effect, the country would be ready to give more thought and attention to the greater use of government in the solution of modern social problems with which individuals are unable to cope.

CHAPTER IX

MEASURES OF RELIEF

THE third phase of the progressive movement in the nation—the extension of the functions of government to relieve distress—is important not so much because of what the national government is doing or can do in enacting remedial legislation, as it is because of what it seemingly ought to do and people generally expect that it will do. In the last few decades, nations all over the world have been earning for themselves the title “paternalistic” because of the degree to which they have intervened to promote the welfare of their citizens. Systems of compensation for injured employees, of insurance against old age and unemployment are prescribed; the number of hours a day and the conditions under which laborers may work are carefully regulated; child labor is prohibited; and in hundreds of other particulars the individual is protected. This same intervention by the government in matters that were formerly almost entirely controlled by individuals has been emulated by many of the state governments in our own country; and workingmen’s compensation, mothers’ and widows’ pensions, the minimum wage, and similar measures have been embodied in statutes. This rapid extension of governmental activity abroad and in the individual states in this country has led many to expect similar action by our federal government. Industry and commerce have developed so quickly and so

extensively that many corporations have employees in a number of different states, and consequently no single state can regulate them all. The protection of the individual working man and woman, and the conservation of child life have assumed national proportions and have seemingly become national problems. The demand for national legislation and national relief grows more and more insistent and the reasons seem more and more urgent; but, unhappily, the obstacles in the way of any great extension of the federal powers in these directions remain almost insuperable.

The three most important questions in connection with which the federal government is called upon to enact remedial legislation are the protection of men, women, and children engaged in industrial work, taxation, and the conservation of natural resources. Over the last two questions, the national government has almost plenary power; over the first, in some respects the most pressing question of all, it has practically no power at all, except in so far as it exercises control over employees engaged in interstate commerce. Congress can revise the tariff or abolish it entirely; it can levy an income tax and a corporation tax; it can prescribe the terms upon which national forests may be cut, mines opened, and water power used; but it is powerless to deal effectively with child labor, occupational diseases, or old-age insurance.

To give to the federal government the power to grapple with these problems, moreover, would mean more than the mere passing of an amendment or two to the constitution. It would necessitate an upheaval of our entire constitutional and judicial system. The theory under which state governments can and the federal government cannot legislate on matters that peculiarly concern individuals, such as the number of hours a

day men and women shall work and the amount of pay they shall receive, is that all power originally is vested in the states and only that portion specifically yielded to the federal government can be exercised by it. In determining whether Congress or any other federal agency has authority to exercise a certain power, the courts always presume that it has not, and require clear evidence to prove that it has. While the authority of the nation is thus restricted by the constitution and judicial interpretation, there has developed in the states a power known as the police power which gives to them most extraordinary authority in relieving distress. If it can be shown that an act is necessary to promote the health, safety, or welfare of its citizens, the courts will uphold the authority of the state to enact it. It is by the exercise of this liberal, elastic, and far-reaching power that states have been able to extend their functions to relieve distress; and it is because of the lack of this power or one similar to it that the nation cannot do likewise. To give to the nation real jurisdiction over the changing conditions of modern industrial life would be to take a large share of the police power from the states, to upset precedents of the courts, and to change the fundamental spirit of the constitution. Until such fundamental changes are made, the measures of relief which the nation can adopt will be few and relatively ineffective.

Whether the progressive movement should go so far as to revolutionize the present system of government so as to give to the nation jurisdiction which now belongs to the states is a question that should be determined only after a careful consideration of the relative advantages and disadvantages of state as compared with national action in affording economic and social relief. One objection frequently raised against individual state

action is that laws are not uniform and cannot be made so. New York prohibits children under fourteen from working in factories; Alabama has no such restriction. Sixteen states allow children under sixteen to work at night; the others do not.¹ New Jersey and New York have workingmen's compensation acts; Delaware and Florida have not. The practical result of such diversity is to put a premium on lax laws. Just as corporations, driven from many of the other states by strict laws, turned to such states as New Jersey and Delaware as havens of rest, so mill owners and factory owners tend to manufacture in those states where the laws governing hours and conditions of labor, payment for injuries, etc., are least numerous and least severe. As a result, reactionary states feel that they may mark time; progressive states feel that they must mark time; and remedial legislation tends to come to a standstill.

Not only is there not uniformity in the remedial legislation enacted by the states now, but it seems almost impossible to obtain it. Certainly, it cannot be expected that forty-eight states will pass the same laws on the same subject without some kind of coöperation; and thus far the most promising kind of coöperation, that offered by the House of Governors, has failed. This house was the direct outcome of a conference called by President Roosevelt in 1908, to which were invited, in addition to senators and members of the House of Representatives, the governors of the several states. The idea was conceived of perpetuating the conference so far as the governors were concerned and the House of Governors was born. It has met once a year every year since its organization, and has discussed a number of questions on which uniform state action

¹ Pamphlet No. 184—Child Labor. Issued by National Child Labor Committee.

seemed wisest; but the House of Governors, useful as it promised to be, has been unable to pass far beyond the stage of mere discussion. Diversity of state laws with the evils that naturally follow in their wake must be accepted unless federal action can be secured.

Moreover, even if it were possible to induce the states to enact uniform laws, real uniformity would be almost as far off as ever. Laws that are similar on the statute books may become exceedingly diverse when interpreted by the courts. A workmen's compensation act is declared unconstitutional in New York and constitutional in New Jersey and other states. The police power of one state is construed to extend to regulating the hours of labor in a certain industry and construed not so to extend in a similar case in another state. Unless the judges of the highest courts in the different states, as well as the legislators, can come together and agree upon uniform principles of interpretation, uniform treatment of the evils and dangers connected with modern industry will be impossible.

The very diversity which is used by many as an argument in favor of giving to the federal government control over remedial legislation is the reason advanced by others for advocating that it be reserved to the individual states. The question, it is urged, is not whether *some* governmental agency should intervene, but whether the nation rather than the state should be the government to do so. In leaving it in the hands of the individual states, experiments can be made which, if they fail, cause little or no disturbance outside of the particular state in which they are made. Washington can try its own scheme of state insurance; Wisconsin can develop its own plan of pensioning mothers, and other states are warned by their failures and heartened by their successes. This opportunity for experimenta-

tion, which is harmless where it fails and greatly beneficial where it succeeds, is a strong argument in favor of state rather than national regulation of industrial matters.

There is another argument that is often advanced, which, though in a measure traditional, nevertheless merits consideration; i. e., the principle of local legislation or home rule. It is contrary to the genius and policy of the Anglo-Saxon peoples to give to any central authority power that can be effectively used by the local government. Englishmen and Americans are essentially self-governing and do not readily accept much interference from without. The fact that the training and the temper of the people are both against it, added to the fact that it would be extremely difficult for a central government to know intimately local conditions and problems, would seem to make it unwise to entrust to the federal government any great control over the individual's affairs.

On the whole, therefore, it is not easily possible nor entirely desirable at this time that the national government should be given full power to enact remedial legislation in connection with the first important question with which it is often expected to deal; i. e., the protection of men, women, and children engaged in industrial work. This view makes the third phase of the progressive movement in the nation of less practical importance—temporarily, at least—than the first and second, and throws the burden of relieving industrial distress upon the individual states. It emphasizes anew the proposition that the progressive movement, especially in the nation, has not run its course, but that it is just beginning; and that the necessary next steps are to make the national government more responsive to the wishes of the people and to control the great industrial

corporations engaged in interstate commerce. With these two steps accomplished, it will be practicable, at some later time, to consider a larger extension of the national government's activities in relieving distress.

Although the federal government cannot completely solve the problems that arise in connection with the protection of men, women, and children engaged in industrial work, its jurisdiction over interstate commerce gives it the power to protect those employees who are engaged in any way in commerce between the states. This it has already done in a measure by enacting an Employers' Liability Act. This act at present applies only to those employees who are engaged in interstate commerce and is based upon the distinctly modern theory with respect to injuries sustained by workmen while engaged in any occupation, that the cost of such injuries should be borne not by individual workmen and their families, but by society in general in the form of an increase in the price of the commodity in the production of which the injury was suffered. Human wear and tear are placed in the same category with machine wear and tear and are added to prices as legitimate costs of production and distribution.

The first Employers' Liability Act passed by the nation was enacted in 1906.¹ It provided that the employees of any common carrier engaged in interstate commerce, or in commerce in the District of Columbia or the territories, might recover for injuries sustained by them in the course of their employment, even although they were caused by the negligence of a fellow-servant. This section of the act did away with the old common law rule that an employee was presumed to know the habits and ability of his fellow-employees and

¹ 34 U. S. Stat., pt. 1, p. 232.

to guard against any negligence on their part. It removed from the firemen or engineers of a great railroad corporation, employing thousands of men, the ridiculous obligation of familiarizing themselves with the capabilities of all their fellow-workers and changed the rule that made it impossible for them to recover damages when their arms or legs were broken through the carelessness of a track walker whom they had never met.

Another provision of the Act was to the effect that the contributory negligence of an employee would no longer be a bar to recovery for injuries sustained if the railroad company itself had violated a statute. Thus, if a trainman were injured through his own negligence in coupling cars in a case where the coupler was not of the kind prescribed by some statute, the railroad company could not interpose the carelessness of the employee as a defense. Moreover, the statute recognized the principle of comparative negligence by allowing an employee who had been injured partly because he had been negligent and partly because the company had violated a statute to recover an amount proportioned to the extent to which the company's carelessness had contributed to the accident.

Finally, the act provided that no employee should be barred from recovering damages on the ground that when he had accepted his work he had voluntarily assumed all risks incident to it and was therefore supposed to know what he was about. This privilege, however, was given to the employee only in cases where the railroad had violated a statute in allowing the employee to assume the risk.

This first Employers' Liability Act of 1906 was declared unconstitutional by the Supreme Court in a group of cases known as the Employers' Liability

Cases.¹ The ground upon which the Supreme Court rested its decision was that the statute invaded the province of the state governments by including within its provisions *all* the employees of a common carrier operating between states and not merely those employees of such interstate common carriers who were engaged in interstate commerce. The court pointed out that a railroad, most of the business of which was interstate, might have to pay damages under the federal act to an employee on a small branch line that formed but a part of the whole system and lay wholly within a single state.² Although, as Justice Moody urged in his dissenting opinion, there was good reason to believe that Congress intended to limit the application of the act to employees engaged in interstate commerce, the court refused to read into the statute what was not plainly there and accordingly declared it ambiguous and unconstitutional.³

To remove the objections raised by the Supreme Court against the first act, Congress in 1908 passed a second Employers' Liability Act, which, with the amendments passed in 1910,⁴ is the law on the subject to-day. The second Act, so far as the modification of the fellow-servant doctrine, the doctrine of comparative negligence, and the doctrine of assumption of risk are concerned, is substantially the same as the first. There is an additional provision, however, which gives to the state courts concurrent jurisdiction with the federal

¹ 207 U. S. 463.

² 207 U. S. 498.

³ It is interesting to compare the decision of the court in this case with that handed down in the Standard Oil Case in 221 U. S. 1, where the court reads into the Sherman Law the word "unreasonable."

⁴ For the Act, see 35 U. S. Stat., pt. 1, p. 65; for the amendment thereto, see 36 U. S. Stat., pt. 1, p. 291.

courts and thus makes it possible for the injured workman to bring his action in either.

Although the Supreme Court, in declaring the first act unconstitutional, had intimated that the sole objection was the ambiguity which made it appear to include workingmen engaged in intrastate as well as in interstate commerce, the second act was attacked by the railroads on a number of other grounds. The matter came before the Supreme Court again in the Second Employers' Liability Cases,¹ and, after a thorough argument from all angles, the law was upheld.

Although the Employers' Liability Act now in force marks a great advance over the common law, it needs to be improved in a number of important particulars. In the first place, the two common law defenses, i. e., that the injury was due to the negligence of a fellow-servant and that the risk was voluntarily and knowingly assumed by the employee, should be removed in those cases where the employer has not violated any statute. Moreover, the third of these defenses, that the accident was caused in whole or in part by the carelessness of the employee and that the amount of damages may, therefore, be reduced in proportion to the degree of the employee's negligence, should be modified so as to allow an employee to recover in all cases where he has not been willfully negligent.

The law should be further modified to provide for the payment of specific sums of money instead of amounts determined upon by a capricious or sympathetic jury. These amounts might be stated in the act and be based upon the seriousness of the injury, the length of the time of disability, and the income of which the employee and his family are deprived by his incapacity. Such a system has two distinct advantages.

¹ 223 U. S. 1.

It definitely recognizes the payment of damages for accidents to workingmen as a legitimate cost of production and it insures fairness to employer and employee by preventing the one from being mulcted and the other from being cheated by the uncertainty and prejudice of jury awards.

The federal government, although it is limited in its power to enact remedial legislation except in connection with employees engaged in interstate commerce, nevertheless can be of great assistance indirectly by conducting investigations and furnishing material upon which states may base their action. A large amount of this work is done even now by permanent federal departments, such as the Department of Commerce and the Department of Labor and by special committees or commissions such as the Industrial Commission and the present Commission on Industrial Relations. Properly tabulated and interpreted, and widely spread, the results obtained by such investigating bodies are of immeasurable value in molding public opinion and inciting it to action. There is, however, danger lest the use of commissions be overdone and more information amassed than can be readily assimilated and used. Most federal reports are uninviting and uninteresting and are rarely opened by the average citizen. It would seem that the time has come when the needs already clearly shown should be met, rather than that more time and money should be given to placing upon them any stronger emphasis.

The ability of the national government to relieve distress so far as taxation is concerned is much greater than it is in connection with industrial problems. One of the first steps which can be taken by the federal government in this regard is to pass a law providing for the creation of a permanent, non-partisan tariff board or

commission, appointed by the President for a reasonably long term and at a fairly high salary and having general jurisdiction over all tariff questions. Such a tariff commission, on the recommendation of President Taft, was established in 1909; but because of the purely partisan opposition of the Democrats never had a chance to exert any great influence and passed out of existence in December, 1912, on account of the failure of Congress to appropriate funds for its maintenance. Progressive elements in all parties are agreed that the tariff commission should be revived, believing that in that way only can the worst evils of the present tariff system be cured.

One of the first tasks of such a tariff commission would be to make an exhaustive, scientific study of the whole tariff question for the purpose of determining whether a tariff is needed; and, if so, for what reason and to what extent. At present, there is no convincing argument based on scientific principles that a tariff is needed at all. The Republican party and its successor, the Progressive party, maintain that American manufacturers and American workingmen need protection against the injurious results of competition with low-priced labor in other countries; the Democrats, on the other hand, are equally insistent in their claim that a protective tariff is unnecessary and that it merely serves to foster trusts and monopolies, to raise the cost of living without adding to the rate of wages by keeping out cheaper products from abroad; but Democrats, Progressives, and Republicans alike can offer little or no logical support for their contentions. A careful study of the entire question by an unprejudiced tariff commission, including a comparison of labor conditions, wages, standards of living, etc., here and abroad, as well as the availability of raw materials, cost of trans-

portation, and other similar factors, would make impossible the conflicting statements that are now heard from seemingly reliable sources and would go far toward establishing a reasonable and just tariff policy.

In the second place, a tariff commission would abolish a practice which custom alone has rendered tolerable; i. e., the practice of revising the entire tariff at one time. Not only does Congress at present attempt the tremendous task of revising the tariff on hundreds of articles as different as wire nails, feathers, and sugar at one session; but as a rule the revision is put off as long as possible and is then rushed through in a few months. Of the last two tariff sessions, the first—that of 1909—lasted only five months, and the second—that of 1913—lasted six; and, although in each case there were men on the committees in charge of the revision who had had former experience in tariff revisions, the time allotted to the committees, to Congress, and to the nation as a whole, was altogether too short.

The evil results that flow from this wholesale revision are manifold. In addition to the objection already hinted at that no adequate study can be made of labor conditions and the other elements that must be considered in imposing an equitable tariff, exceptional opportunity for graft and corruption is offered. The graft takes the form of log-rolling and trading votes, while the corruption appears as outright bribery. The senator from Louisiana, to protect his interests, will vote for a high tariff on woollens if the senator from Massachusetts will do what he can to keep out cane sugar. And in the secrecy of the committee room where not even members of Congress can follow the intricate deliberations and agreements on the several schedules, it is not difficult for those interested to see to it that the

tariff is "properly" adjusted even if bribery or what amounts to bribery must be resorted to in doing so.

A third defect of the present system of tariff-making is the tendency to use it almost entirely for political purposes. Whenever a political party lacks an effective campaign issue, it seizes upon the high cost of living or the impoverished condition of workingmen, or the depression in business and manufacture, and attributes these phenomena to the tariff. Parties out of power add to their own strength by promising to revise the tariff if they are placed in power; and, at the same time, attempt to discredit and weaken the party that is in power by arousing public opinion to demand a change. If the unfortunate party in power revises the tariff upward, there is an outcry that it has broken its platform pledge because all parties are supposed to pledge downward revisions; if, on the other hand, it revises downward, business is unsettled and the party is accused of starting a panic. Thus in 1909 the Republican party, when forced by public opinion to change the tariff, enacted the Payne-Aldrich bill, which made a number of substantial increases and thereby opened the party to the accusation of violating its pledge. In 1913 the Democratic Congress revised the tariff downward through the Underwood bill and, for that reason, is held largely responsible for the lack of confidence that prevails in the business world.

The tariff commission advocated by the progressive movement will make difficult, if not impossible, the use of the tariff for political purposes. In fact, one of the principal objects in establishing the commission will be to remove the tariff as an issue entirely from politics. Like the Interstate Commerce Commission, the tariff commission will have practically no connection with Congress save to make suggestions and recommend

laws; and, like the railroad commission, it will be unaffected by political agitations and changes.

In addition to removing the serious defects of the present method of revising the tariff, there are certain positive advantages which a commission such as has been suggested may be expected to confer. In the first place, the relation of the tariff to the high cost of living can be ascertained with a fair degree of certainty; and, if it be found that the tariff is really responsible, the duties on necessities can be reduced or removed. By a judicious shifting of revenues, taking the tax off some and placing it upon others, the burden can ultimately be placed upon those best able to bear it. This process is of necessity a difficult one; because of the tendency of all taxes to fall upon the poorer classes, it involves more than removing the duty on wool and increasing it on diamonds. But beyond a doubt, by a series of careful adjustments, a tariff commission could do much to lighten the present burdens.

In the second place, distress will be relieved to the extent to which it is caused by trusts, monopolies, and combinations in restraint of trade that are now made possible because of protection by the tariff from any real competition. Not all trusts and monopolies depend upon the tariff for their existence, it is true. Some are natural and would exist were the tariff entirely removed. Nor is it certain that artificial national trusts when threatened with dissolution by the removal of the tariff may not be driven to combine with other artificial national trusts to form artificial international trusts. But, at any rate, whatever turn the development of trusts may take, the most satisfactory adjustment of their relations to the tariff will come through a non-partisan commission such as has been described.

In the third place, the periodic disturbances of busi-

ness that are now caused by frequent revisions of the tariff will be unknown. At most, the one or two industries affected by changes in a few items in a single schedule will be disturbed, and even in those cases the disturbance will not be serious because it will presumably have been anticipated and provided for by the commission. Business men all over the country will not have a disposition as at present to curtail manufacturing and trading for weeks and months while they await the new tariff provisions and observe their general operation and effect.

Finally, it will be possible for public opinion to exercise a more effective influence on tariff revisions. Instead of being limited, through inability to follow the course of legislation in Congress, to a general demand that the tariff be revised up or down, and, in many instances, not knowing until after the act has been published which way the tariff is going, it will be possible to know and discuss each schedule and each item as it comes before the commission. This need not mean that the tariff will be revised as the result of popular clamor. What it will mean, however, is that every interest affected will have an opportunity to be heard and that the average citizen will be able, if he so desires, to follow and understand the policy and purpose that govern the imposition of a tax which he is obliged directly or indirectly to pay.

To supply the revenue of which the government may be deprived by any great reduction of the tariff; and, at the same time, to carry out the policy of placing the burden of taxation on those who, by reason of their wealth, are most able to bear it, the progressive movement proposes a national tax on all inheritances. Such a tax should, of course, establish a reasonable exemption limit, apply a carefully graduated rate, and make lib-

eral exemption allowance in favor of widows, children, direct heirs, charitable institutions, and similar legatees. There are, it is true, taxes of a similar kind at present in effect in a number of the states; but that should not be a controlling reason why the national government should not add another to raise money for national purposes. If such a tax were properly graduated and the state taxes taken into consideration in fixing the rate, a national inheritance tax would probably work no great injustice. On the other hand, it would have one decided advantage in addition to replacing revenue lost by a reduction of the tariff on necessities. It would aid in some small degree in reducing the swollen fortunes that have been accumulated and that are, in many respects, a menace to the nation. A revised tariff that will take the duties off necessities and place them upon luxuries, supplemented by the income tax now in force and the proposed inheritance tax, will do much to introduce a more equitable system of taxation and thus relieve, in some degree, present distress.

The third great question, in connection with which the federal government is asked to relieve distress, is the conservation of natural resources. In this field, unquestionably, the federal government can accomplish more good than the states acting singly or in coöperation.

“Theoretically the states can develop and protect the streams . . . within their respective borders, and if these streams are interstate in character the states affected can unite in plans and expenditures for their joint protection and development. Practically, however, the tendency is increasingly in the direction of federal action upon such matters. Some of the individual states are developing

effective policies of water conservation, but it is the federal government after all which is called upon to make the chief expenditures for the development of navigation and for the protection of the forest cover around the sources and along the watersheds of both navigable and non-navigable streams. It is the federal government which will be asked to build the reservoirs in which to impound the flood waters at their source so that devastation may be prevented and stream flow be made regular and beneficent. . . . The states which are jointly interested in the disposition and development of interstate waters not only do not coöperate with each other, but are in fact antagonistic.”¹

What is true about water and water power is equally true about the other important natural resources such as minerals, land, and forests; state authority has a tendency to be weak and uncertain and quite unable to cope with the difficult problems that constantly arise.

The fundamental underlying principle of the whole conservation movement is that the present generation, in making use of the resources of the country, should have in mind the needs of the generations that are to come. In all instances, the practical application of that principle means that resources shall be used economically and wisely; and, in some cases, goes to the extent of prohibiting the use of certain resources entirely. If a natural resource is to be used and its use is placed in the hands of a private individual or corporation, the greatest care should be exercised to make certain that some governmental agency, state or national, retains general control. This may be done by letting out the privilege of developing the resource on a short-term

¹ Report of the Secretary of the Interior, 1912, p. 19.

lease or by granting the privilege outright and exercising close supervision by means of a commission. This policy has already been adopted by the federal government to a certain degree; it should be confirmed and extended to all cases. If the government adopts the policy of retaining the natural resources of the country and developing them itself, it should recognize them as public utilities to be managed for service and convenience and not exploited for mere profit.

The natural resource in the proper development of which lies the national government's largest opportunity for service is waterways. As instruments of interstate commerce, as sources of water power and irrigation, the waterways can be made immensely more valuable than they are at present; while as causes of floods and disasters a proper control over them can do much to alleviate misery and distress.

So much attention has been given during the last twenty or thirty years to the development and regulation of railroads that there is some danger that the importance of waterways as arteries of interstate commerce may be overlooked. In the United States, on June 30, 1912, there were 240,239 miles of railway track, which during the preceding fiscal year carried approximately 1,818,232,193 tons of freight.¹ Because of the dearth of statistics, the exact amount of traffic of the entire system of inland waterways cannot be given for the same period, but it is safe to say that it is not one-tenth as much.² Rivers and canals that formerly teemed with commerce have been allowed to become obstructed and to remain unrepaired; canal traffic in New York State, which is typical of canal traffic all over the country, has decreased from 3,345,941 tons in 1900

¹ *Am. Year Book*, 1913, p. 561.

² *Ibid.*, pp. 554-555.

to 2,606,116 tons in 1912;¹ and cities that formerly were centers of commerce and trade have lost greatly in prestige.

There seems to be no good reason why, under the initiative of the federal government, there should not be a revival of traffic by water. At present, the railroads are unable to handle the freight that is given to them; and, if the amount continues to increase as rapidly in the next decade as it has in the last, the need of additional facilities for carrying it will become extremely urgent. Another reason for looking more and more to the waterways as means of interstate commerce is that transportation is much cheaper by water than it can possibly be made by rail. Railroad rates have been hammered down so consistently by the Interstate Commerce Commission at the demand of public opinion that no great reductions can fairly be asked from that quarter. In fact, railroads are constantly demanding rate increases on the ground that the present rates do not yield a fair return on the companies' investments. A well-devised system of navigable waterways would rapidly increase the freight-carrying capacity of the country. Not only could freight be carried as safely and as cheaply by water as by rail, but, in some cases, it could be carried even more expeditiously. The indirect benefits of government aid in this direction would be a lowering of the cost of living, the stimulation of the flow of commerce in arteries now almost shrunken from disuse, and a quickening of trade and industry all over the country. To a certain extent, too, the vitalizing of inland waterway commerce would help to develop many of the smaller cities and would counteract the tendency toward too great centralization in large cities which have unusual natural facilities for handling commerce.

¹ *Ibid.*, p. 556.

A second way in which the federal government can be of assistance in connection with waterways is in promoting, extending, and regulating their use for the purpose of generating water power. "There is no more important subject now pending before Congress and the country than the adoption of a definite and comprehensive water-power policy."¹ Such a policy should have as its fundamental principle the development of water powers for public rather than private uses. According to Herbert Knox Smith, former Commissioner of Corporations, thirteen companies, the most conspicuous of which are the General Electric Company and the Westinghouse Company, control more than one-third of the entire development of water power in the United States.² The first step, therefore, which the federal government should take is to place these private corporations under effective supervision. This can be done by providing for a license fee or by retaining the right to revoke a grant entirely if it is not satisfactorily used. A second step which the government should take is to make certain that all potential water power is developed. Water that can be profitably used should not be allowed to remain idle either on land owned by the government or on that which has been granted to private individuals or corporations. In the third place, the national government should see to it that water-power rights, like railroad facilities, are extended to all upon equal terms. The gravest danger that could arise in the development of the water power of the country is the formation of a water-power monopoly uncontrolled by any governmental agency and giving service of a kind and amount determined by its own inclination and

¹ Report of the Secretary of the Interior, 1912, p. 14.

² Quoted by Van Hise, *Conservation of Natural Resources*, p. 135.

the desire to make profit. The government is needed, finally, to regulate the rates that are charged for water power and for the electric current and power generated by its use. As in the case of railroads, rates should be based on the amount of capital actually invested where the enterprise is a private one and solely on public convenience and necessity where the public is the owner. Under no circumstances should the waterways be regarded as mere means of making profit.

A third way in which the national government can assist so far as waterways are concerned is in connection with their use for purposes of irrigation. Congress has already done a great deal in this direction by passing, in 1902, the Newlands or Reclamation Act, which provided for the use of government funds to construct reservoirs, dams, and irrigation systems. The money so appropriated for particular projects was to be repaid by farmers who used the water so that it might be invested again in other projects, and thus eventually reclaim as much as possible of the arid land of the country. Since the act went into effect, over a million acres have been reclaimed, of which more than 721,000 acres are now irrigated and tilled. Sixty-nine million dollars have been spent, of which three millions have been returned as water rents and charges.¹ The work has been somewhat retarded by the operations of land speculators who have sold land at high prices to farmers on the installment plan, arranging to have their payments for the land take precedence over payments to the government for the water rights, and thus postponing the beginning by the government of new irrigation projects. This practice should be stopped at once and government payments should be made promptly so that the work of reclamation may be carried on as rapidly

¹ See Report of Secretary of Interior, 1912.

as possible. The present irrigation policy of the government should be encouraged and extended. Above all things, the future of irrigation should not be allowed to fall entirely into private hands. Many of these corporations organized and built irrigation ditches before the national government took up the problem and now control a very large area of irrigated and irrigable land. If the government does not take over these corporations entirely, it should at least make certain that they are subjected to the strictest control.¹

A final way in which the federal government can be of assistance in connection with the waterways of the country is by taking steps to prevent the occurrence of floods. Scarcely a year passes without the record of some terrible flood disaster such as those which Dayton, Ohio, and a number of the cities along the Mississippi experienced in 1913. In addition to the more than occasional loss of life, more than \$50,000,000 worth of property is destroyed in the United States by flood every year.² The assistance which the national government can render in preventing these floods is chiefly of three kinds: by purchasing and preserving forest lands at the sources of streams and thus making possible a constant and steady flow; by constructing reservoirs to hold storm and other excess water; and, finally, by building dams and levees to keep streams from overflowing their banks. The federal government has already given assistance of the first kind by appropriating \$11,000,000 to be used for the purchase of forest lands at the headwaters of streams and rivers to improve their

¹ See Van Hise, *Conservation of Natural Resources*, p. 185, and Report of the Secretary of the Interior, 1912, p. 23.

² *American Year Book*, 1913, p. 288. Van Hise quotes Leighton's statement that the annual loss is \$237,800,000, but this probably includes indirect as well as direct damages; see Van Hise, *Conservation of Natural Resources*, p. 182.

navigability and continuity of flow.¹ Most of this money is being spent in buying up tracts of land in the East. The necessity of appropriating more money for similar purposes in connection with streams in the West will be greatly diminished if the national government will but adopt now a far-sighted policy and refuse to part with government forest areas, the preservation of which will be helpful in promoting uniformity and regularity of the flow of streams and rivers. The policy of the government in allowing gigantic reservoirs, upon the stability of which thousands of lives and millions of dollars' worth of property directly depend, to be constructed and maintained by private individuals, is wrong both in theory and in practice. The federal government either should itself build reservoirs or should make certain that those built by private persons are safe by subjecting them to thorough and frequent inspection. Finally, in building dams and levees, the frequency with which such rivers as the Mississippi break down the embankments and overrun the land and the impotence of the states in meeting the situation, demonstrate the need of effective federal action. The same methods and perhaps the same machinery that were used by the government in constructing the Panama Canal might be used in improving great inland waterways. The expense entailed upon the national government in extending further aid in these three directions; i. e., purchasing forest areas, constructing reservoirs, and building dams and levees, would be offset in a comparatively short time by the savings that would result from the prevention of the present enormous loss and damage of property by floods.

In so far as conservation of natural resources is concerned, the progressive movement in the nation is of the

¹ 36 U. S. Stat., pt. 1, p. 961. Weeks Forest Reserve Act.

utmost importance because of the aid which the national government, and it alone, can give. In so far as a readjustment of the system of taxation is concerned, the national government can offer a fair amount of relief. In so far as relief of the distress and poverty caused by the complex conditions of modern industrial life are concerned, however, the movement in the nation is relatively insignificant. On the whole, the steps which the progressive movement in the nation must take next are the modification of the theory and structure of the national government which make it so difficult for the federal government to meet the demands made upon it; and to evolve and perfect a system of effective corporation control.

PART III

THE PROGRESSIVE MOVEMENT IN THE
STATE

CHAPTER X

MEASURES OF CONTROL OVER THE NOMINATION AND ELECTION OF OFFICIALS

FUNDAMENTALLY, the principles of the progressive movement in the state are the same as those in the nation: corrupt special influence must be removed; the structure of government must be modified so as to allow a greater and more direct participation by the people in the conduct of public affairs; and, finally, the functions of government must be increased in an effort to meet industrial and social needs. Because of the limited area of the states, certain problems connected with the movement, such as the control of industrial and railroad corporations, are not so great as they are in the nation; and, because of the same limitation in area, certain other problems, such as direct legislation and the protection of men, women, and children engaged in industrial work, are more important because they are more acute and at the same time can more readily be solved. In the nation, moreover, partly because of the peculiar system of government which narrowly delimits its powers, the progressive movement is not so far advanced as it is in the states. For that reason, the primary emphasis at present, so far as the nation is concerned, must be placed upon the preliminary steps of governmental and corporation control; while, in the states, although these preliminary steps are important,

they are becoming more and more incidental to the extension of the functions of government to afford social, economic, and industrial relief.

In advocating greater control by the people over government, the progressive movement has in view not only an increase in the influence exercised by voters in politics, but also an increase in the number of those who exercise it. The theory of democracy upon which the entire progressive movement is based is that every normal citizen who is mentally and morally fit not only has the right, but is also under a duty to participate in the solution of political problems. Holding this point of view, those who believe in the movement can find no logical reason why women should not, and every logical reason why they should, have the right to vote. In spite of the fact that the term democracy is so frequently used in speaking of governments, there has never yet been a democracy in the true sense of the term. Men theoretically find no difficulty in conceiving a government in which all the governed, with the exception of those that are manifestly unfit, may take an active part; but they are extremely reluctant to put the theory into practice. And so, in the history of democracy, there have been property, color, and sex qualifications, no one of which is based upon reasonable theory and two of which have been recognized as wrong and removed. It is worthy of note, too, that the failure of most so-called democracies can be traced, in large measure, to causes closely connected with women and the things in which women are interested; and it is interesting to speculate on the probable fate of those governments had the women been allowed to take an active part in them.

It would be futile to attempt in the limited space that can be given to the topic to present a full discussion of

the advantages and disadvantages of woman suffrage. There are, however, certain objections to it that are so distinctly opposed to the underlying principles of the progressive movement that it will be well to give them some consideration. The most important of these objections are five: (1) that the place for women is in the home and that effective participation in politics by women will necessarily mean the sacrifice of the best interests of the home; (2) that the extension of the franchise to women, although it may not lower the tone of political life, will not raise it, in fact that it will have practically no effect at all; (3) that participation in politics will tend to degrade women and diminish the unconscious influence which they now exert; (4) that the right to vote rests ultimately upon force and physical strength and that, since women cannot be expected to meet all the obligations of the franchise such as going to war, holding office, etc., they should be given none of its privileges; and, finally (5), that most women do not want to vote and that the agitation for woman suffrage is the work of a comparatively few restless and dissatisfied women who have missed their true mission in life.

That a woman's interests are largely in the home, in the same sense in which a man's interests are largely in the office, the shop, or the factory, may be readily admitted. But merely because a woman's interests are in the home would seem to be no more valid as a reason for confining them to the home than the fact that a man works eight hours a day as a plumber, carpenter, or bricklayer would be accounted a sufficient reason for urging that his activities be limited to plumbing, carpentry, or bricklaying. Participation in government is a duty which men and women should discharge in addi-

tion to any other duties they may have to perform; and no one should be allowed to shirk his—or her—share of the burden because he—or she—is busy with other things. There are, moreover, two other good reasons why the contention that women's interests should be confined to the home will not bear analysis. In the first place, because of the conditions of modern life, there is an increasingly large number of women who are forced out of the home into industrial and commercial life. These women have much more in common with men similarly engaged than with women who are compelled to do no work other than housework; and to refuse to allow them the right to determine the laws that intimately affect their welfare on the ground that their interests are in the home is incongruous in the extreme. In the second place, the interests of the home, in the case of those women whose activities are centered there, are becoming less and less absorbing and exacting. As Olive Schreiner has so forcefully pointed out in her book on *Woman and Labor*, the tasks of the modern housewife are very slight, so slight that woman is fast becoming a parasite upon society. To prevent woman from falling to a position in which she will have no value other than mere sex value, her interests must be increased and enlarged; and no more fruitful field for her activities exists than the field of politics in the broad sense.

For a long time, many opponents of woman suffrage contended that to admit women to politics would be a positive evil in that it would tend to increase vice, corruption, and graft. The advocates of woman suffrage answered that, far from making politics any worse than they now are, women would purify and ennoble political life. Events have not shown that either side

was entirely correct in its assumption. Eleven states ¹ have adopted state-wide woman suffrage, and in not one of them has there been any evidence that women divide on political questions differently from men. Testimony as to the effects of woman suffrage in these states is conflicting: few claim that it is an unmitigated good or an unmitigated evil; some claim that on the whole it has improved conditions; others that it has made them somewhat worse. The truth seems to be that it is impossible to tell whether there has been any change at all. As this fact becomes more and more evident, the opponents of woman suffrage cease to object to it on the ground that it will do harm and object to it because it has not resulted in any clearly perceptible good. If the right of franchise were conditioned upon the ability to demonstrate clearly the benefit conferred upon the state by the exercise of it, the voting population would be much smaller than it now is. Not all men, any more than all women, can be expected to make marked improvements in politics; but that is no reason why they should be relieved of their share of the responsibility and burden. On the other hand, some women can aid in political life in a peculiarly helpful way. An Ella Flagg Young as Superintendent of Schools in Chicago and a Katherine B. Davis as Commissioner of Charities in New York can render services of a kind that few men are equipped to give. There is, on the whole, therefore, just about as much reason why all women should vote as there is why all men should vote. Although it often seems that better government could be had if those who seemingly contribute nothing were eliminated

¹ Wyoming (1869), Colorado (1893), Utah (1896), Idaho (1896), Washington (1910), California (1911), Arizona (1912), Kansas (1912), Oregon (1912), Montana (1914), and Nevada (1914).

from participating in it, the history of governments has shown that that government is most secure in which the greatest number of those subject to it have a voice in the conduct of its affairs.

The third objection to woman suffrage, that it will tend to degrade women and rob them of the unconscious influence which they now exercise, really condemns itself. If our political life is rotten, so rotten that women cannot take part in it, the logical course would seem to be to take steps to purify it and not to accept the situation as inevitable and to use it as an argument for excluding a whole class from the exercise of the franchise. It is a mistake, too, to suppose that women, even when out of politics, are unaffected by low standards in politics. Society is not divided into water-tight compartments; and vice, corruption, and degradation of men are bound to break through and exert an unwholesome influence upon the ideas and ideals of women. As to robbing women of the unconscious uplifting influence which they are now said to exert, it is questionable, in the first place, whether the strength of that influence is not greatly exaggerated. How women whose chief interests are in "society" can inspire or even assist the public careers of their husbands is difficult to imagine. The greatest inspiration that women can give is through service, through contact with, rather than aloofness from, the practical problems of politics.

Another argument, which, though not always openly expressed, nevertheless probably influences as many men against woman suffrage as any other single argument, is the argument that women should not be given the privileges of the franchise because they cannot assume its burdens. The essence of this contention is that the right to vote rests on physical strength and brute force; and although men have long ceased to apply it

to men and no longer exclude from participation in government the weak and physically unfit, who cannot go to war or hold public office, they still apply it to women because of the traditional position which woman occupies as the inferior and dependent of man. Men are instinctively unwilling that women should become entirely independent; and much of the feeling that caused men under the old common law to regard the wife's personality as merging into that of the husband still prevails. Practically, the objection that women cannot go to war or hold public office can have but little weight. Beyond the fact that women can be of service as nurses and in similar capacities, modern warfare is so conducted that there is little that a man can do that a robust woman could not do almost as well. It takes skill rather than strength to shoot a modern rifle; and mathematical exactness is more essential than brute force in discharging a twelve-inch gun. As modern warfare develops further, the number of things which women can do if the emergency requires will constantly increase. The contention that women are unable to hold office has been amply disproved by experience. Neither theoretically nor practically is there any reason why women should not fill most offices as well as men and some offices better. The true value of the entire objection becomes apparent when its inconsistency is noticed. Although hundreds of men are unable to take part in war or to hold any public office that would greatly tax their strength, no suggestion is made that they be deprived of the right to vote. It is only where the right of women is concerned that democracy is made to rest on might and physical prowess.

When all other argument fails, the opponent of woman suffrage raises as an unanswerable objection the assertion that a majority of the women do not want

it. Overlooking the impossibility of compiling statistics to show the real attitude of women on the question; overlooking, too, the incongruousness of charging women with not wanting what they have but a remote possibility of obtaining; overlooking, finally, the indifference shown by men which causes a comment when more than sixty or seventy per cent. of the voters participate in an election; we come to the real point at issue, that women ought to take part in politics whether they want to or not. The franchise is a duty as well as a privilege and no member of society capable of assuming it can rightly evade it. Nor is this contention answered by asserting that women already are represented in politics through their husbands and fathers and brothers; for beyond the fact that many women have no husbands and could not by the greatest stretch of the imagination be said to exert any influence over the votes of their brothers or fathers, it is no more justifiable to discharge political responsibilities by indirection and influence than it would be to discharge moral or financial obligations in the same way. It is only when every man and every woman feels strongly the responsibility resting upon him or her and conscientiously tries to meet it that special influence, graft, corruption, and similar evils will disappear from our political life.

Having defined the people so as to include the women as well as the men, the progressive movement aims to give to a majority of the people so defined an easy, direct, and certain control over their government. To do this, it proposes, first of all, to put into effect a group of measures which are designed to give to the people greater control over the nomination and election of candidates; as, for example, direct primaries, corrupt practices acts, the short ballot, the Massachusetts bal-

lot, and an adequate system of registration; and, secondly, a group of measures designed to give to the people control over candidates and policies after election; as, for example, the initiative, referendum, and recall. The first of the measures proposed by the progressive movement to give to the people greater control over the nomination and election of candidates is a direct primary law. It has long been the boast of politicians that they do not care who elect candidates to office so long as they have the power to nominate them. In some districts and even in some states the confidence expressed by the politicians in the boast is well justified because a particular party is so strong that its candidates are certain of election. A Republican has no chance of being elected to any state-wide office in South Carolina, nor has a Democrat any chance in Vermont. There are hundreds of aldermanic, assembly, senatorial, and congressional districts where the same situation exists. And in states or districts where the situation does not exist and the parties seem about evenly divided, it is not uncommon for the bosses of the supposedly opposing parties to get together and divide the spoils between them. The methods by which politicians exercise their control are very simple. A committee appointed by the previous county, state, or other convention places upon the ballots the names of the delegates to the respective conventions. The delegates are voted upon at a so-called primary election and are almost invariably chosen. These irresponsible and practically unknown delegates then meet in the state, county, assembly district, or other convention and under the direction of the boss and committee to whom they owe their nomination, select candidates for the different offices. How little real power can be exercised by a

majority of the people under such a system need not be pointed out.

There is at present in most states some form of direct primary law, and for that reason no exhaustive discussion of direct primaries as a part of the progressive movement is necessary. But in scarcely a state is there a direct primary law which has not some serious defects. Here, as in so many other cases, politicians have yielded a little rather than give up all, and have allowed to be passed laws which are named direct primary laws, but which have little but the name in common with real direct primary legislation. Such halfway measures do more harm to the progressive movement than total failure to pass any laws at all possibly could. They quiet the demands of those who cannot distinguish a thorough-going reform from a sham reform, and when they fail to accomplish the expected results they open the door to attack on all progressive measures.

A first defect in many of the existing primary laws is the retention of the convention system for the nomination of officers to be elected by a state-wide vote. Under a thorough-going system of direct primaries, all conventions are abolished except for the purpose of making a party platform. Nominations are made by petitions, the number of signatures to which is arbitrarily fixed or is a certain percentage of the votes cast for the office at a previous election. These petitions are carefully examined and verified by some state official, who, if he finds them sufficient, places the names of the candidates upon the ballots.

Another serious defect in many of the direct primary laws now in force is the provision for plurality rather than majority nominations. Such a system of direct primaries makes it comparatively easy for ma-

chine politicians, by placing a number of candidates in the field and thus dividing the opposition, to retain control. Reform elements are usually unorganized and slow to combine, while the regular party candidate can frequently count on a sufficiently large number of faithful adherents to give him the plurality necessary to secure the nomination. The result is that by controlling perhaps only twenty or thirty per cent. of the votes and causing the others to be scattered among a number of good candidates the machine is able to win the day. If a majority vote were required to nominate, the progressive forces would realize the necessity of combining; and, even if they did not, the machine element could not command sufficient votes to carry the primary without making important concessions.

In working out a system of majority nominations, in order to obviate the need of holding several elections until some candidate has the votes necessary to a choice, the progressive movement proposes what is known as a scheme of second and third choices. If, for example, a candidate for governor is to be nominated, the names of all candidates are placed on the ballot and alongside of the names are three columns headed first, second, and third choice respectively. Each voter is asked to vote for one candidate for first, one for second, and one for third choice. In counting the votes, two different methods are used. Under one of these two methods, which is known as the Ingram method, the first choice votes are counted separately, and, if any one of the candidates receives a majority, he is declared nominated and the count ends. If no one receives a majority of first choice votes, the second choice votes cast for each candidate are added to his first choice votes; and, if any candidate receives a majority of the first and second choice votes, he is nominated. If not, the third

choice votes are added and the candidate that receives the largest total number of votes is nominated.¹ A striking characteristic of this method is that no candidate is eliminated in passing from the counting of the first choice votes to the counting of the second choice votes.

Another method of preferential voting is the so-called Australian method. Under this plan, votes are cast for first, second, and third choices, but where no candidate receives a majority of the first choice votes cast, the candidate who received the lowest number of first choice votes is eliminated and his votes are scattered among the other candidates according to the second choice of those who voted for the eliminated candidate as their first choice. If no candidate then has a majority, the process is repeated until only two candidates remain, and then the candidate who has received a majority of the first and second choice votes is declared elected. This plan is open to the objection that a candidate may be defeated even though he received more first and second choice votes than his successful competitor. For example: of three candidates for assemblyman, one may receive 1,000 first choice votes, another 1,500 and the third 2,000. Of second choice votes, the first candidate might have 4,000, the second 400 and the third only 100. According to the rule that the man receiving the lowest number of first choice votes is to be eliminated, the candidate who received 1,000 votes would be declared "out," although, if second choice votes were considered, he would clearly be the popular choice. A second disadvantage of the Australian system as compared with the Ingram method is that, in order to eliminate and redistribute votes, all

¹ See Owen, *The Code of the People's Rule*, Sixty-first Congress, Second Session; Senate Document No. 603, pp. 96-97.

the ballots must be assembled at one central place, while under the Ingram method, since it is a mere matter of adding together the first, second, and third choice votes on each ballot, and no distribution of second choice votes is made, the counting can be done in the various precincts or districts and the totals alone sent to some central place.

A third defect frequently pointed out in many of the direct primary laws now in force is that, while they theoretically encourage candidates to run independently, nevertheless, because of the heavy expenses incident to every political campaign, it is impossible for anyone who is not himself very wealthy or who does not have the backing of a political machine, to run with any promise of success. This objection has added force in cases where a regular election follows the primary election. In such cases, it is necessary for the independent candidate to maintain campaign headquarters, print and distribute literature, hire halls for meetings, and to incur other expenses to obtain the nomination; and then to go through almost exactly the same procedure to be elected. This situation, far from crippling the power of the bosses, rather increases their strength. Because of superior organization, they are better able to obtain the names for petitions, which are necessary to make a man a candidate and then to assume the burden and expense of a double campaign.

This defect in the system of direct primaries has been removed in a few states by the passage of an act which, in a measure, is supplemental to direct primaries and yet which is of use in removing special influence and unfair opportunity in politics generally. This act is usually known as a corrupt practices act, because originally in most cases it was designed to re-

move outright corruption and bribery; but in some states it has been so greatly developed that at present the removal of corruption is only an incidental feature. One phase of the corrupt practices acts that have been passed is that which forbids individuals and corporations to make, and nominees to accept contributions which are made presumably for the purpose of obtaining special favors after election. The method employed to accomplish this purpose is to require all political parties and all candidates to file with the secretary of state a full statement of all campaign contributions and the objects for which money contributed was spent. This is a very common provision and is found in the corrupt practices acts of most of the states having such acts.

It soon became apparent to progressives in some of the states, however, that merely to prevent the elementary form of bribery and corruption was not enough to insure a fair campaign and an equal opportunity for all the candidates. So long as a candidate himself was allowed to spend as much money as he chose in his own campaign, wealthy candidates had a decided advantage over their poorer competitors. The amounts that have been spent by candidates for such offices as governor of a state or United States senator have been notoriously large. To give every candidate an equal chance, so far as finances are concerned, a few states have incorporated as part of a corrupt practices act one or more sections definitely limiting the amount of money which a candidate may spend. The Wisconsin corrupt practices act,¹ for example, limits the expenditures by or on behalf of any candidate for any office as follows:

¹ Session Laws, 1911, C. 650, Sec. 94-28.

- “(1) For United States senator, seven thousand five hundred dollars.
- (2) For representative in Congress, two thousand five hundred dollars.
- (3) For governor, judge of the supreme court or state superintendent of schools, five thousand dollars.
- (4) For other state officers, two thousand dollars.
- (5) For state senator, four hundred dollars.
- (6) For member of assembly, one hundred fifty dollars.
- (7) For presidential elector at large, five hundred dollars, and for presidential elector for any congressional district, one hundred dollars.”¹

In Oregon, under the Huntley Law, “no sums of money shall be paid, and no expenses authorized or incurred by or on behalf of any candidate to be paid by him, except such as he may pay to the state for printing . . . in his campaign for nomination to any public office or position in this state, in excess of fifteen per cent. of one year’s compensation or salary of the office for which he is a candidate; provided, that no candidate shall be restricted to less than one hundred dollars. . . .”² In the case of campaigns for regular election, candidates are not allowed to spend more than ten per cent. of the salary attached to the office which they seek.³ Thus by specifying definite sums in some cases and by specifying a certain percentage of the salary of

¹ There are other provisions for city officers, etc., which are not quoted.

² General Laws of Oregon, 1909, C. 3, Sec. 1.

³ *Ibid.*, Sec. 8. It is interesting to note that in 1913 the people of Montana initiated and passed a law exactly like the Oregon statute; see Laws of Montana, 1913, p. 593.

the office in others, candidates' campaign expenses, both in primary and final elections, are being controlled and all candidates are placed upon a more nearly even basis.

Progressive states are coming to the conclusion now that it is not sufficient to prevent corruption by forbidding individuals and corporations to contribute except under certain circumstances, or by limiting the amount of money which candidates themselves may spend; but that it is essential for the people to give positive aid to candidates in the conduct of their campaign. This is done in some instances by means of a pamphlet prepared and issued by the secretary of state, containing the statements of the different candidates, their portraits, and the statements which any persons opposing the candidates may desire to make. All statements are required to be submitted a reasonable time before election; the statements are then compiled, a page usually being taken by each candidate; and a short time before the election these pamphlets are distributed to all registered voters in the state. Candidates are required to pay for the space which they use in amounts in proportion to the importance of the office for which they are running. Thus in Wisconsin, candidates for United States senator are charged three hundred dollars for the first page and one hundred and fifty for the second; candidates for the House of Representatives are charged two hundred dollars for the first page and one hundred for the second, and so on.¹ The money which is paid for space in the state pamphlet is not included in the limit of expense within which candidates are held.

Another interesting provision in these more advanced corrupt practices acts is that regulating advertisements in newspapers. The Oregon statute states that "no publisher of a newspaper or other periodical shall

¹ Session Laws 1911, C. 650, Sec. 94-27.

insert, either in its advertising or reading columns, any paid matter which . . . tends to aid, injure, or defeat any candidate or political party or organization . . . unless it is stated therein that it is a paid advertisement. . . . No person shall pay the owner, editor, publisher, or agent of any newspaper . . . to induce him to editorially advocate or oppose any candidate. . . ."¹ The Wisconsin statute requires further that any candidate who has an interest in a newspaper or periodical shall file, a specified number of days before election, a statement showing the character and amount of the interest.²

In Colorado the people, not satisfied to forbid corruption and to limit candidates' expenditures, passed a law in 1909 requiring that "the state treasurer shall pay to the state chairman" of each political party "for campaign purposes a sum equal to twenty-five cents for each vote cast at the last preceding general election for the nominee for governor of that political party."³

The state chairmen in their turn are directed to turn over to the county chairmen twelve and one-half cents for every vote cast in their respective counties for governor at the preceding election. Each candidate, moreover, is allowed to contribute to his campaign fund a sum not exceeding forty per cent. of the first year's salary of the office; but beyond the contribution by the state and the limited contributions by the candidates no expenses may be incurred. The law is somewhat defective in that it discourages the formation and impedes the growth of independent parties by subsidizing most heavily the party that can poll the largest vote, and in that it allows a candidate to contribute so large a per-

¹ General Laws of Oregon, 1909, C. 3, Sec. 33.

² Session Laws 1911, C. 650.

³ Session Laws 1909, C. 141.

centage of the salary of the office for which he is running; but nevertheless it is a step in the right direction because it recognizes political campaigns as public rather than private enterprises and, as such, subject to the control and entitled to the support of the state.

Another set of principles which the progressive movement in the state advocates for the purpose of giving to the voters more effective control centers about reforms in the ballot. The first of these principles, which had its origin in the effort of the last decade or more to improve municipal government, is known as the short ballot principle. The demand for a shorter ballot, both in municipal and in state elections, is based upon the fundamental weaknesses of the present system which make it impossible even with the most improved system of direct primaries and the most thorough-going corrupt practices act to insure the election of the best candidates. The first of these two weaknesses is the difficulty of interesting the average citizen in the election of unimportant officials. Every voter takes a keen interest in the candidates for President, governor, and mayor; but only the most conscientious citizen is particularly concerned over the candidates for coroner, sheriff, attorney-general, or secretary of state. The second weakness is the sheer inability of the ordinary voter, who is busy with his own affairs, to discriminate wisely between candidates for each of thirty or forty offices.

“Every voter who entered an election booth in Cleveland at the last state election was handed a ballot with 210 names upon it, five tickets with 42 names each, and his duty was to vote for 42 men. How many of these 210 men did any voter, not a professional politician, know so that he could intelligently compare the rival candidates and

choose between them? Surely not more than 10 of the men or enough to fill five of the offices. How then did he select the other 37 candidates for whom he voted? Obviously, he did not select them at all. He was obliged by the necessity which confronted him to choose not between candidates, but between political parties, and he accordingly placed his cross under the eagle or the rooster and blindly, ignorantly voted for the 37 men of whom he knew absolutely nothing.”¹

The situation in Cleveland is typical of the situation all over the United States. Voters are overwhelmed and discouraged by the enormous burden of keeping track of innumerable candidates and their qualifications.

There are two distinct methods which may be used to shorten ballots and remove the weaknesses in the present system. In the first place, elections may be held more frequently and the number of candidates to be voted for at each election can thus be reduced. This principle has been put in practice very widely by separating municipal from state and national elections as in the case of New York City, where city elections are held in odd years and state and national elections (with the exception of elections for assembly) in the even years; and in separating state from national elections, as in New Jersey, where the governor is chosen once every three years. It would seem, however, that the relief offered to the voter by this plan of frequent elections is more apparent than real. The first weakness already pointed out, that the average citizen cannot take a deep interest in candidates of minor importance—

¹ *The Necessity of the Short Ballot in Ohio*, p. 11. Issued by the Municipal Association, Cleveland.

as, for example, candidates for dairy commissioner and sheriff—still remains. A voter has ordinarily only a certain amount of time which he is willing to give to politics and he usually saves his interest for the important elections and the prominent candidates. By comparison with presidential elections, other elections are known as "off years," and the voting everywhere is comparatively light.

Real reform, therefore, would seem to depend upon the second method commonly proposed; i. e., a reduction in the number of offices to be filled and consequently of the number of candidates to be chosen. Such a plan involves more than a mere cutting down of the size of the ballot; it means a fundamental change in the theory of government. In the minds of many, more democracy means the election of more officials by the people. In the minds of those who support the short ballot principles, more democracy means the election of fewer officials; or perhaps, to put it more exactly, the election of fewer officials means more democracy, provided those few officials can be effectively controlled.

In drawing the line between the officials that should be elected by the people and those that should be appointed, the character of the office to be filled should be the deciding factor. If the office is one that has a great deal to do with determining the policy of government, as that of the governor or senator, the incumbent should be elected directly by the people. If, on the other hand, the office is chiefly administrative, better equipped men can usually be obtained by appointment. No one would seriously advise that the members of the Interstate Commerce Commission, for example, be elected by the people; and yet many state officials whose duties are almost as largely administrative as those of the members of the Commission are now elected in that way.

In many of the states, moreover, the members of the governor's cabinet, the secretary of state, state treasurer, attorney-general, and others, whose duties are not only largely administrative, but are so closely connected with those of the governor that any lack of harmony is almost certain to result in inefficiency, are elected and not appointed. If the character of the office were used as a test in the case of all state officers, probably only the governor, lieutenant-governor, state senators and members of the assembly would be chosen directly by the people.

The advantages of the application of the short ballot principles to the state government are obvious. In the first place, each voter could easily take an intelligent part in selecting candidates. Instead of voting blindly for a number of men, without having any knowledge of their ability or of the duties of the offices which they are to fill, the voter could concentrate his attention on the character of the men who were running for the important offices and leave to them the task of filling the others. In the second place, where the governor has full power of appointment, the responsibility for inefficiency in any department is readily fixed. The blame is cast, and fitly so, on the man who appoints. Under the present scheme, if anything goes wrong in the office of the secretary of state, the governor can deny all responsibility because he did not select the man for the office. Finally, better men will be chosen for both the elective and the appointive offices under the short ballot plan. Capable men seek responsibility and are therefore more apt to run for office when the entire burden of the administration falls upon them than when it is shared with five or six others. In the case of the appointive offices, frequently the qualities that are most needed for an administrative position are least effective

in winning popular support. A man may make an excellent secretary of state and yet be unable to poll a thousand popular votes. Since it is to the direct interest of a governor to have in his cabinet the most capable men, it is reasonable to expect that he will choose men better qualified for the subordinate state positions than could be elected by the people themselves.

A second reform in connection with the ballot which the progressive movement in the state purposes to make to give the people greater control over elections is the substitution of the so-called Massachusetts ballot for the present one. Under the Massachusetts system, the names of the candidates are arranged alphabetically under the titles of the different offices with the party designations after each name; and, instead of being able to vote for a candidate for each office by making a single mark under the party emblem, the voter must make his mark in the square alongside of each candidate for whom he votes. The chief merit of the Massachusetts ballot is that it compels the voter to think of a candidate in terms of the office rather than in terms of the party. It is notorious that under the present system hundreds of voters are guided in marking their ballots solely by the party emblem and that this tendency is taken advantage of to the full by political machines. With the number of candidates to be chosen at any one election reduced to three or four, and the names of those three or four grouped under the respective offices for which they were running, even voters of moderate intelligence would be able, and those of average interest would be willing, to discriminate carefully among them.

For the sake of completeness, a word may be said in concluding this chapter with reference to an adequate registration system. Without such a system to make

sure that each qualified voter votes only once, and that no voter not qualified votes at all, the other devices mentioned in this chapter are apt to be of little effect. An adequate registration system requires two things: first, an effective test of a man's right to vote; and, secondly, an efficient method of applying the test. One of the elements of such a test, of course, should be full information concerning every elector in each district. This information to be of greatest value should be gathered not a month or two before election, but should be kept permanently on hand easily available for any who desire access to it. In Oregon, for example, every elector is required to register once every two years between the first Monday in January and the fifteenth of May, and the registration books, except for a period of fourteen days about two months before election, are always open to the public. Another element of the test should be a careful comparison of the signature made at the time of registration and that made on election day. With full information on hand a sufficiently long time before the election, the chief problem becomes one of enforcing the test. In this task, the police are of the utmost importance. Because they do not do their work effectively, it has been the practice for independent civic organizations, such as the Honest Ballot Association in New York City, to send men to the polls on election day in an effort to prevent election frauds. Although the work of these organizations has, in many instances, been most effective, it is apt to be spasmodic and dependent upon the enthusiasm of the members; and, beyond all that, it is wrong in principle to entrust the suppression of frauds that vitally affect the general public to such volunteer bodies. The police should be commissioned to inspect cheap lodging houses for transient guests, to verify addresses given by voters in reg-

istering; and on election day should be kept inside the polling places to challenge suspicious-looking voters and compare their statements with those made in the registration books.

The measures discussed in this chapter, with the exception of woman suffrage, have had to do with improving the machinery of nominating and electing candidates to office. A state with a system of direct primaries, a thorough-going corrupt practices act, the short ballot, the Massachusetts ballot and an adequate registration system is reasonably certain of electing to office men who represent the majority of the people at the time they are elected. To retain control over representatives *after* they have been elected and to guard against the ill effects of misrepresentation, the progressive movement proposes another set of measures, commonly grouped under the heading direct legislation, which will form the subject of discussion in the next chapter.

CHAPTER XI

MEASURES OF POST-ELECTION CONTROL: THE INITIATIVE, REFERENDUM AND RECALL

IN addition to the measures already discussed which are intended to give to the people greater control over the nomination and election of officials, the progressive movement in the state proposes another set of measures, the object of which is to enable the people to continue their control after officials have been elected. For a long time reformers believed that to remove graft, corruption, and special influence from government, it was only necessary to insure the election of honest candidates; that men, honest when elected, were likely to remain honest, and even if they did not, adequate punishment could be meted out by refusing them renomination and reelection. The practical effect of this theory has been that such reforms as direct primaries and corrupt practices acts have been given great emphasis as aids in electing good men; and that the terms of office of different officials have been made short and elections frequent, so that a faithless or incompetent official might be removed before he could do much damage. In short, there has been an interim between one election and the next during which the people have felt that officials and government could not be controlled save perhaps through the rather indefinite action of public opinion.

While the people have been willing to admit their in-

ability to control government between elections, the agents of special interests have been quick to seize this as a most favorable time for gaining their own ends. They have organized elaborate lobbies and conducted systematic campaigns to win legislators to their support. Because the public generally is not sufficiently interested to follow the details of legislative procedure—and, even if they were, would not, because of its intricacies, be able to do so—legislators can pretend to serve the people while secretly they carry out the behests of politicians and special interests. And, even if it comes to the point where the young legislator is forced by public opinion to choose one of two masters, the inducements that are held out by corporations and other interests are often much more alluring than the uncertain prospect of renomination and reelection for a one or two-year term at a very meager salary. It is, therefore, not uncommon for ambitious young men to “sell out” to those who can help them to advance; and this is especially easy and not clearly reprehensible in many cases because the bribe offered is not money, but preferment, and the question on which the legislator’s vote is sought is, as it is so well put, one on which men may honestly differ. By bribery, open or secret, by lobbies, by organizing committees, by sharp parliamentary practice, special influence has been able to do what the people confessedly could not do, namely, control government from election to election.

To counteract this tendency and give to the people a direct and adequate control over all branches of government between elections, the progressive movement advocates the initiative, the referendum, and the recall. The initiative gives to the people the power to pass any law independently of the legislature; the referendum allows the people to veto any law passed by the legisla-

ture which the people believe is inimical to their best interests; while the recall makes it possible to remove from office representatives who are manifestly unfit to serve their constituencies. These three measures have been more widely discussed, more bitterly condemned, and more loyally praised than almost any other measures connected with the whole progressive movement; and the attention which they have attracted has been largely due to the fact that they have been greatly misunderstood. To some it has seemed that the purpose of direct legislation is to substitute a pure democracy for representative government; and to others it has seemed like undue interference by the people with the officials elected by them to exercise the functions of government. In reality it is neither. All three measures are based on the principle that in a democracy the control of the people over government should be continuous and direct; and to extend the power of the people over legislation after election is essentially similar to extending it to primaries before election. At every point in government the people should be able to oppose to special influence and corruption an effective means of control.

The initiative is a governmental device by means of which a certain number of voters may by petition propose a law or a constitutional amendment and require that it be submitted at an election for ratification or rejection by the voters themselves.

Two different uses to which the initiative may be put need to be carefully distinguished. In the first place, the initiative may be used to propose and ratify amendments to the constitution. In the second place, it may be used to propose and ratify ordinary statutes. Of these two uses, the first, although it ordinarily receives less attention, is by far the more important. In

most states to-day, the people have deprived themselves of practically all means of amending the state constitutions save through appeal to the members of the legislature; and, since many of the most urgent reforms are those that curtail the powers of the legislatures, it is hopeless to expect them to advocate constitutional amendments with any enthusiasm. Without the ability to amend the state constitutions easily, therefore, the initiative, the referendum, the recall, and other measures on the progressive program become impracticable, because to put them into effect constitutional amendments are necessary.

A first consideration in discussing the initiative is the number of people who may be permitted to call an election. Two methods are at present in use. In the one case, a fixed number of persons are required to sign the initiative petition. Thus the Maine law, for example, requires the signatures of not less than 12,000 electors.¹ This method is analogous to that which is widely used in commission-governed cities in connection with the nomination of candidates by petitions where the law requires a specific number of signatures in order to place a candidate's name on the ballot. The second basis of determining the number of voters necessary to call an election is the percentage basis. In Oregon the percentage is based upon the number of votes cast for justice of the supreme court at the last preceding election; in Ohio it is based upon the "total number of votes cast for the office of governor at the last preceding election;"² in Oklahoma, "the ratio and per centum of legal voters . . . shall be based upon the total number of votes cast at the last general election for the state

¹ Laws of Maine, 1909, p. 1457, Sec. 18.

² Ohio Constitution, Art. II, Sec. 1g.

office receiving the highest number of votes. . . .”¹ In some states, to make certain that the demand for the law is widespread, it is provided not only that a stated percentage of the voters sign the petition, but that the signers be distributed through a reasonably large number of counties. Whatever the basis upon which the number of voters necessary to call an election is determined, the important thing is to make the requirements fair. The opponents of the initiative favor either an excessively high or an excessively low percentage, because in either case the best results cannot be obtained. If the percentage is too low, disgruntled elements of the population are encouraged to call frequent elections. If, on the other hand, the percentage is too high, the initiative becomes almost useless because it requires almost complete unanimity of opinion to start it in motion. Experience shows that from five to ten per cent. is a fair percentage—one that gives a reasonably large demand for a law a chance to express itself, and one which at the same time is high enough to prevent the calling of too frequent elections on unimportant questions.

In some cases, the percentage of voters required to sign petitions varies for different purposes. Thus a petition signed by a fairly low percentage, as three per cent., is made to serve as a kind of advisory initiative; that is, the legislature upon the receipt of the proposed law accompanied by the petition is required to give it full consideration and discussion, but is not compelled to pass it, nor is the secretary of state required to call an election at which the measure may be submitted to popular vote. A petition signed by a larger percentage, however, as, for example, six per cent., would be deemed

¹ Oklahoma Constitution, Art. V, Sec. 2.

mandatory and an election would have to be called.¹ Another use to which the varying size of the percentage of signatures is put is in determining how soon the election is to be held. If only five or eight per cent. of the voters sign, the rule in some instances is that the initiative election is to be put off until a regular election. If, on the other hand, the percentage of signatures is ten or fifteen, it is taken as an indication of urgency, and a special election must be called within a short period. In some instances, too, a larger percentage of signatures is required to propose a constitutional amendment than is required for an ordinary law. Thus the Oklahoma constitution² permits eight per cent. of the legal voters to propose any legislative measure, but requires fifteen per cent. to propose amendments to the constitution. Inasmuch as it is most important that the people have an easy method of amending the constitution, and inasmuch as no great harm can come from the mere consideration of amendments, it seems somewhat anomalous to require a much higher percentage to initiate constitutional amendments than is required for ordinary laws. If the initiation of amendments were made easy and a fairly large vote required to pass them, it would seem much more reasonable.

The second step in an initiative election is the filing of the proposed measure accompanied by the petitions with a designated state official, usually the secretary of state. The secretary of state is required to examine the petitions to see whether they are sufficient; and, if they are, to issue the call for an election. In some of the states this early method of filing petitions with the secretary of state and requiring him automatically to

¹ See Ohio provision, Ohio Constitution, Art. II, Sec. 1b.

² Art. V, Sec. 2.

call an election if the petitions were found sufficient has been changed by the later initiative laws. Under these laws, the measures proposed are sent to the state legislature and the state legislature is allowed to take any one of three courses: pass the measure as proposed; submit it to the people; or, finally, draft an alternative measure and submit that together with the initiative measure to the people at the initiative or other election. Thus, the Maine law provides that "any measure thus proposed by not less than 12,000 electors, unless enacted without change by the legislature at the session at which it is presented, shall be submitted to the electors, together with any amended form, substitute, or recommendation of the legislature and in such manner that the people can choose between the competing measures or reject both."¹ This latter method, because it gives more opportunity for discussion and because it assumes coöperation with, rather than antagonism against, the state legislature, is unquestionably better than the other method of submitting unchanged the original measure proposed. If the legislature is favorably disposed to a measure, the people receive the benefit of many helpful suggestions and amendments; if the legislature is opposed, the people still have the opportunity to adopt the measure in its first form.

After the petitions have been signed and filed either with the secretary of state or with the state legislature, the next step is to submit the measures proposed to a vote of the people. The first question that arises in this connection is, how long a time should elapse between the certification by the secretary of state or other official that the petitions are sufficient and the election?

¹ Maine Laws of 1909, p. 1457, Sec. 18; see also Ohio Const., Art. II, Sec. 1b.

In answering that question, two dangers must be kept in mind: first, that the time may be so long that interest in the measure may die; and, secondly, that the time may be so short that mere temporary excitement may be sufficient to put a measure through. Enough time should be allowed for fullest publicity and discussion, and between two and six months would seem to be enough for that purpose. It is important not only that time should be allowed for discussion, but also that every voter should understand thoroughly the measure to be voted on. To make this possible some states cause to be mailed to every registered voter a copy of the proposed laws together with any arguments for or against them that may have been offered, and also a sample copy of the ballot, containing the text of the measures to be submitted.

Finally, there remains to be considered the election itself. Where only one measure or one set of measures is submitted, the voter is merely required to vote "yes" or "no" on each measure. Where the legislature has the opportunity to submit alternative measures, the voter is required to indicate which of the two measures he prefers. In connection with the number of votes necessary to carry a measure, the question sometimes arises as to whether the number should be a majority of all the voters registered or voting at a preceding election, or merely a majority of those voting at the initiative election. Ordinarily, the latter basis is adopted. The question becomes one of great practical importance, especially where the initiative election is a special election and only those immediately interested, perhaps not more than fifteen or twenty per cent. of the voters, take part. In such cases a very small minority would be sufficient to obtain the passage of the law. To guard against this situation, it is sometimes provided that a

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majority vote is sufficient to carry a measure, provided the total vote equals a certain percentage of the vote cast for some state official, as the governor. Once passed by the electors, measures proposed by the initiative become law without further steps. It is not necessary, as in the case of other laws, to present the measures to the governor for his approval or veto.

The advantages which the initiative confers in the way of increasing the control of the people over government are chiefly three. In the first place, where the initiative is in force, the people are not entirely dependent upon the state legislatures. In many states, no broad, fundamental policy which requires a constitutional amendment, can be adopted, even though it is favored by a large majority of the voters, because everything must begin with the legislature and the legislature refuses to take the first step. The initiative on constitutional amendments gives to the people a power that is most elementary in a democracy; i. e., the power to fix the fundamental law of the state. That the power of initiation in this direction has been so completely taken away from the people and so completely placed in the hands of a few temporary officials is one of the wonders and anomalies of our government. Much less important, but nevertheless of the greatest value, is the right of the people to propose specific laws other than amendments. The hands of all the people should not be bound so far as legislation is concerned, because they have selected a few men to enact laws. State legislatures should make the great bulk of the laws and always will make them, whether the initiative is adopted or not; but machine politicians and special interests should not, by winning over a few hundred legislators, and inducing them to do nothing, thwart the wishes of millions to obtain some pressing reform through legisla-

ion. The initiative, first of all, recognizes the right of a majority of the people to change any law, constitutional or statutory, whenever they so desire and whether the legislature is willing or not.

In the second place, the initiative gives to fairly large minorities the opportunity of forcing their demands upon the attention of the state. At present, the single reformer or group of reformers, even if they are elected to the state legislatures, are like voices crying in the wilderness. Without the consent of the majority in control they cannot even introduce their bill and obtain a hearing. Outside the legislature their position is even worse. The opportunity to bring measures before the people for discussion and vote, which at present is lacking, is supplied by the initiative in permitting a small group of voters interested in the adoption of a particular measure at least to call an election and force the people to ratify or reject it. Many measures, moreover, which are supported by small groups of progressives are taken up by the legislature, but are passed in a form entirely different from that in which they were first proposed, and are injurious rather than beneficial. Weak, anemic direct primary, corrupt practices, and workingmen's compensation acts are passed by a legislature that aims to serve God and Mammon by giving to the people a law which they want, and at the same time so modifying and qualifying it as to make it practically ineffective. Under the initiative a measure is promulgated among friends; and if it is not accepted by the people at the polls it is because they do not approve of its principle and not because it is defectively drawn; while if they do approve the law, it is more likely to be effective in meeting the situation for which it was intended.

A third advantage of the initiative is that it encourages the individual to take a more active interest in

legislation. Under the initiative every citizen becomes a member of a kind of state legislature with all the duties and privileges that legislators have. He may himself draft a law and, if he can find a sufficient number of persons interested in its enactment, bring it before the entire body of citizens for a vote. He is a committeeman on occasion because he may be called upon by a group of voters interested in a particular measure to investigate the subject and make recommendations. He has an opportunity to study and discuss all bills presented by members of the larger legislature of which he is a member because he is supplied just as the members of the ordinary legislature are with copies of each bill and of the arguments for and against its support. And, finally, he has the right to cast his vote on each measure which is proposed. The stimulus which this opportunity to participate directly in the solution of practical political problems gives toward the study of government in general can scarcely be overestimated.

The principal disadvantages that are usually charged against the initiative by its opponents are: first, that special interests, far from being removed from power, will become more firmly intrenched; secondly, that only a few people will take sufficient interest in measures proposed to take part in elections; thirdly, that unscientific, inconsistent, and ridiculous laws will be placed upon the statute books; fourthly, that it will entail the expense and annoyance of frequent elections; and, finally, that it will weaken the influence of the state legislature and therefore tend to discourage good men from running for office.

The claim that the initiative will really strengthen special influence in politics is based upon the assumption that political machines can more readily set in motion initiative elections than the ordinary group of

reformers can; and that this ability will be used by them to introduce and pass measures favoring their own interests. It is undoubtedly true that under any initiative system politicians find no trouble in obtaining the signatures necessary to call an election; and, although the percentage of signatures required should be high enough to prevent the elections from becoming a nuisance, there is no reason why any body of men should not propose any measure good or bad for public consideration. But, while it may be admitted that the political machine encounters little difficulty in calling an election, it is certain that it encounters a great deal in attempting to carry one. Public opinion, if given sufficient time and information, can ordinarily be trusted to expose a bad measure; and with every voter supplied with a copy of the law, and thirty or sixty days in which to discuss it, it would be a heavy indictment against democracy if most corrupt measures were not detected and voted down. Practical experience with the initiative, moreover, shows that confidence in the ability of the people to discriminate between measures is not misplaced. Eaton, in his book, *The Oregon System*, gives an account of the "first trick bill tried on the Oregon electorate." The bill proposed to remove the toll on certain of the state roads. "Innocent enough looking it was, to be sure, and inviting the support of all citizens who were sorry for those who had to pay the toll. . . . But somebody discovered that if the bill passed, the state of Oregon would be bound to purchase the road for \$24,000 and keep it up afterward. Graft was suggested, and . . . the people voted down the innocent looking bill by a majority of 13,000 . . ." ¹

Practical experience, too, furnishes a reasonable

¹ Eaton, *The Oregon System*, pp. 27-28. Also Montague, *The Oregon System at Work*, *National Municipal Review*, April, 1914.

amount of evidence to disprove the contention that only a few voters are sufficiently interested in the measures proposed to take part in the initiative elections. Information has been collected with regard to the sixty-four measures passed in the State of Oregon under the initiative and referendum from 1904 to 1910.¹ The highest percentage of voters to express an opinion on any of these sixty-four measures was 91,² on the question of prohibiting the sale of liquor; and the lowest percentage was 62, on the question of authorizing collection of state and county taxes on separate classes of property. It need hardly be pointed out that the difference of interest that is normally taken in these two topics is ample explanation of the disparity in the percentages. The average per cent. of the total vote cast in connection with all sixty-four measures was about 74.

But, urge those who oppose the initiative, suppose the voters do take a most active interest in preparing and voting upon laws, the inevitable result will be the addition of unscientific, inconsistent, and ridiculous laws to the statute books. In urging this argument, men fail to keep in mind the fact that it would be extremely difficult to pass worse bills by a popular vote than are turned out every year by the legislature in practically every state. The average member of a state legislature to-day is below rather than above the average citizen of the middle class in intellect and general ability. The laws which these legislators turn out when they have plenty of time for deliberation and are actuated by the most honest motives are not models in law-making; while those passed hastily and corruptly are almost unintelligible. As to the statement that the people are in-

¹ *Ibid.*, pp. 18-24.

² Ninety-one per cent. of the total votes cast at that election.

consistent in their legislation, the danger is more apparent than real. A favorite instance of inconsistent legislation under the initiative is frequently cited in connection with laws proposed in Oregon to regulate the salmon industry in that state. "Two laws prohibiting fishing for salmon, etc., were both passed; one was known as the 'Up River Bill,' the other as the 'Down River Bill.' The effect of the passage of both laws was to prohibit the taking of salmon at all, although such was not the intention of the proposers. Each only wanted to restrain its rivals. While on its face it would indicate that the vote cast is evidence of the confusion that may result from the use of the initiative; yet, if the subject were understood as we understand it here, the result is not surprising."¹ In explaining this seeming inconsistency, the Oregon Conservation Commission said:

"There is some antagonism among the operators of any kind of gear against any other. Between the gill-netters of the lower and the wheelmen of the upper river, this rises to open hostility. Opposing delegations have met before the legislature for many years and each party has succeeded in blocking legislation proposed by the other. At last election . . . each party had its bill, proposed under the initiative, each legislating the other's method of destruction and preserving its own. The electors, in an excess of disgust, tinged with sardonic humor, passed both bills by different but decisive majorities . . ."²

Although it is doubtless true, therefore, that there is and will continue to be much unscientific, inconsistent,

¹ Munro, *The Initiative, Referendum, and Recall*, pp. 226 et seq.

² *Ibid.*, p. 227.

and perhaps ridiculous legislation passed under the initiative, the amount is not nearly so great as the opponents of the initiative would have us believe, nor is the character or amount of such legislation likely to be much worse than it frequently is at present.

The ground for the fourth objection commonly raised against the initiative; i. e., that it is apt to entail great expense and annoyance because of the frequency with which elections are called, can easily be removed. In the first place, if experience shows that elections are too easily called when a certain percentage is required, the percentage can be raised to a point where only those measures that are seriously advocated will be proposed. In the second place, wherever possible and when the urgency of the question does not require otherwise, the measures proposed by the initiative can be passed upon by the people at regular elections. And, finally, if these two devices prove inadequate, the frequency of elections can be definitely limited by statute. This last means is most useful in preventing a small body of enthusiasts from bringing up again and again some measure in which they alone are interested. To prevent this, a provision may be inserted in the law, similar to that found in most general statutes that allow cities to adopt the commission form of government, that the same measure may not be brought before the people more than once within a given period.

A final objection to the initiative is that it weakens the authority of the legislature and therefore tends to discourage the best men from running for office. This objection would have more point if the best men were running for and being elected to the state legislatures under the present system; but, as it is, the character of most of our state legislatures is conspicuously low. One of the chief reasons, moreover, why good men are

reluctant to run now is because they feel that state legislatures are controlled by politicians in behalf of special interests and that a legislator, if he succeeds, must become a mere puppet. To the extent that the initiative breaks down the present secret control of the legislature responsible to the voters rather than to politicians, it makes it easier for better men to enter politics and thus indirectly raises the tone of the state legislatures. So far as the argument that the initiative lowers the character of state legislatures depends upon the assumption that most of the legislature's power is transferred to the people is concerned, it is based upon a total misconception of the entire process. The progressive movement does not advocate the abolition of state legislatures nor does it desire to see the people set themselves up as a rival law-making body. On the contrary, the progressive movement would prefer to have the legislatures do all the lawmaking themselves and believes that in any case there is a certain amount and kind of legislation that cannot be effectively done anywhere but in the legislative halls. But it refuses to close its eyes to a situation that actually exists and to sanction the exploitation of government through a few faithless representatives under the domination of special interests.

The referendum, the second of the measures that together make up what is known as direct legislation, is a negative rather than a positive measure and is used for a purpose directly opposite to that for which the initiative is used. For while the initiative is invoked to enable the people to pass a law which they want, but which the legislature is unwilling to pass, the referendum is invoked to keep the legislature from passing a law which the legislature wants but which the people are unwilling to have. The referendum, therefore, may

be defined as a governmental device by means of which a certain number of voters may by petition call an election at which there are presented for ratification or rejection certain specified laws or resolutions passed by the legislature. Like the initiative, the referendum is used both in the case of ordinary legislation and in the case of constitutional amendments. Strangely enough, while there is violent objection to the initiation of amendments by the people, the practice of submitting amendments to them for their approval or rejection is as old as the state governments themselves. In practically every state, while the legislature or a constitutional convention has the right to propose amendments, they do not go into effect until ratified by the people at the polls. Because of this familiarity with the process of the referendum on constitutional amendments, there is less objection to it in connection with ordinary legislation than there is to the newer process of the initiative; and in the constitution of New Mexico, one of the more recent and reactionary state constitutions, no provision is made for the initiative at all, although the referendum is adopted. There is, however, still objection to the referendum in some quarters among those who fail to realize the inconsistency of giving the people the right to pass upon the fundamental law of the state and refusing to allow them to check wasteful and corrupt legislation.

The operation of the referendum, like that of the initiative, is very simple. In states that have adopted it, no law passed by the legislature except emergency laws affecting the life or health of citizens, goes into effect until a certain number of days, thirty or sixty or more as the case may be, have elapsed after its passage. During this period, a certain number of voters or a certain percentage of those voting for a designated official

at the last preceding election may file a petition with the secretary of state, specifying the law or laws passed by the legislature to which objection is made and asking that an election be held at which the voters generally may ratify or reject the legislature's action. The secretary of state is then required to call such an election to be held within a given time after the petitions have been filed; and between the filing of petitions and the election he is, in some states, required to distribute to the voters copies of the law or laws upon which the vote is to be taken.

The details of the steps that are taken in connection with referendum elections are, with one or two variations, practically the same as those taken in connection with the initiative. The number of persons, as in the case of the initiative, is specifically stated or is a certain percentage of those voting for a designated official at the preceding election. Usually, however, the specified number, as well as the percentage, is higher in the case of the initiative than in the case of the referendum. Thus in the Maine law only 10,000 signatures are needed on a referendum petition, while initiative petitions require 12,000; and in Oregon, where the percentage rule obtains, five per cent. suffices for the referendum, while the initiative needs eight. After the petitions have been filed and verified, an election is called to be held at a stated period after the call is issued. This period is usually the same in both initiative and referendum elections. If at the election a majority of those voting, vote against the law, it does not go into effect; if they approve, the law goes into effect a certain number of days after the date of the approval. Most statutes, moreover, provide that the veto power of the governor shall not extend to measures referred to the people.

The advantages that can be claimed for the referendum are chiefly those that flow from the power of the people to check undesirable legislation. In many cases, it is unnecessary to use this power at all, since the mere fact that the people possess it and can use it removes many of the causes for invoking it. With the referendum in operation, men are not so much inclined to seek public office because of the opportunities for graft and corruption that are offered to them, since their ability to grant privileges and favors is always subject to popular control. Nor are the agents of special interests willing to offer bribes and other inducements so freely where there is no certainty that the recipients will be able to deliver. Politicians lose in prestige and authority because they can neither make nor keep promises with assurance. Over acts of corruption the referendum stands as an effective veto. The direct results of this are: first, to force out of the legislatures the men whose only interest there is to feed from the flesh pots of corruption; and, second, to encourage men to run for office who are actuated by ideals of service.

If the prospect of the referendum does not succeed in preventing corrupt legislation, the referendum itself can be used to check vicious and wasteful laws after they have passed the legislature. In addition to preventing the adoption generally of all bad laws, the referendum is especially useful in controlling legislation that appropriates public funds and that grants special privileges, such as franchises and the right of eminent domain. Legislators are willing and even eager to give valuable rights and to make extravagant appropriations of the public's money for all kinds of projects, especially if they are properly persuaded by those in whose interest the grants are made. Land grants,

franchises, water power, forest reserve, and mineral land steals have been almost every-day occurrences in state and nation. In most cases, these grants pass through the legislatures unnoticed. Occasionally, it is true, protest is made; but even then little can be done to get at the real truth of the matter and settle it equitably. The referendum gives to the people an opportunity to scrutinize closely every grant of money, franchise, or natural resources and to stop those that are clearly unwarranted.

The principal objection raised against the referendum is one that has already been fully considered in connection with the initiative; i. e., that it would deprive the legislatures of so many of their important duties and responsibilities that able men would be unwilling to run. Here, again, the objection is based upon two fundamentally wrong assumptions: first, that men in office now are men of high ability and character; and, second, that the referendum will be used in so many cases that the people will become the real legislature. As was pointed out in discussing this objection in connection with the initiative, by purifying the political atmosphere of our legislative halls, good men will be encouraged rather than discouraged to seek them. As to encroachment by the people upon the province of the legislature, the people will probably use the referendum only when it is necessary to protect their own interests. If the legislators are living up to their responsibilities and are passing laws of the right kind, there is little likelihood that the people will interfere. It is only the legislators of low standards of duty and service at which the measure is aimed.

In addition to the initiative and referendum, which give to the voters control over legislation, the progressive movement advocates a third measure, the recall,

to give the same effective control over men. In a sense, the recall is complementary to the initiative and referendum in that it rounds out and completes popular control over all branches of state government. To many states the added power given by the recall seems unnecessary, the ability of the voters to regulate the acts of public officials being considered sufficient without removing the officials themselves. Consequently, while the initiative and referendum have been adopted in seventeen states,¹ the state-wide recall has been adopted in eight² only. And in those few states, too, where the recall has been adopted, it is used so seldom that practical experience seems to confirm the theory that with an effective initiative and referendum law in operation the necessity for removing officials is very slight. An added reason why the recall is not so popular as the other two measures is the fact that it is new and radical. The referendum, with the principle of which practically all the states are familiar, finds an easy acceptance; and several states have a referendum provision that have neither the initiative nor the recall. The initiative comes second in popularity because it is somewhat akin to the referendum in principle; while the recall, which seems without precedent, is accepted with the greatest reluctance.

The fundamental theory of the recall, far from being either revolutionary or strange, is quite simple and familiar. It is not essentially a process of summarily discharging officials from office, although of course it does accomplish that result. It is rather a method by

¹ Arizona, Arkansas, California, Colorado, Idaho, Maine, Massachusetts (referendum only), Michigan, Missouri, Montana, Nebraska, Nevada, New Mexico (referendum only), Ohio, Oklahoma, Oregon, South Dakota, Utah, and Washington.

² Arizona, California, Colorado, Idaho, Michigan, Nevada, Oregon, and Washington.

which the people may call elections before the stated time and thus regulate the term of office of officials. Instead of definitely fixing an office-holder's term at two years or four years, the voters reserve the right to bring it to a close at any time. An official, therefore, who goes out of office at a recall election is no more open to the charge of dishonesty or inefficiency nor subject to disgrace than officials who go out of office at the expiration of stated terms. The recall system here is comparable to the system of electing members to the English Parliament. The stated term is seven years; but, if public opinion is manifestly opposed to the policy and methods of those in office, an election is called before the end of seven years to determine whether the members are to continue or give place to others. Similarly, in the Boston city charter there is a provision which illustrates the essential purpose of the recall. The mayor of Boston is elected for a term of four years; but every second year at a general state and national election the voters are asked whether a special municipal election shall be held in that year. If a majority vote in favor of holding the election, the mayor's term is thereby shortened from four to two years and he must stand for reëlection or retire. The popular conception of the recall, therefore, as a means of dismissing men from office and the assumption that it is radically different from the present method of election are incorrect and misleading.

The real nature of the recall is seen in its methods of operation, which are in many respects similar to those of the initiative and referendum. If a certain percentage of the voters by petition request a special recall election, such an election is called by the secretary of state or other official with whom the petitions are filed. Usually the percentage required to initiate

such an election is much higher than in the case of the initiative and referendum: in most states it is twenty-five per cent. of those voting at the last regular election for governor or other state officer, while in Illinois, in commission cities, it is fifty-five per cent. Between the filing of petitions and the election, pamphlets are circulated, in which are contained arguments for and against the officeholder against whom the recall is directed. At the election, the voters do not vote on the question of discharging the present incumbent from office, but vote precisely as they would at an ordinary election. The officeholder, unless he expressly declines, is made a candidate to succeed himself, the names of other candidates appear on the ballots as in any other election, and the candidate receiving the largest number of votes is declared elected.

There are in operation at present what may be regarded as five different kinds of recall: the recall of judicial decisions that declare a law unconstitutional; the recall of judges; the recall of appointive officials; the recall of elective officials; and, finally, the advisory recall of federal judges and United States senators. The recall of judicial decisions, which takes its name from the recall of judges and which was proposed by Ex-President Roosevelt as a kind of substitute for the more radical measure is, in reality, not a recall at all, but merely a modified referendum. It proposes to allow the people to pass on all judicial decisions involving the constitution in the same way in which they pass upon legislative acts and constitutional amendments. Every decision declaring a law unconstitutional is submitted to the people for ratification or rejection. With this measure in operation,¹ its supporters claim that the recall of the judges themselves becomes unnecessary. In

¹ Thus far Colorado is the only state that has adopted it.

the first place, it is the decision and not the judge that counts, and to remove the judge or judges who handed down the decision, while the decision itself is allowed to stand, is wasted labor. In the second place, even if the judge who made the objectionable decision were removed and another elected in his place for the specific purpose of changing the decision, such reversals of opinion by the court would tend to make the law unsettled and uncertain.¹

The objections that may be raised to the recall—or more properly the referendum—of judicial decisions are essentially the same as those raised to the ordinary referendum and need not be discussed again. It is interesting to note, however, that, while no one objects to allowing the voters to pass finally on constitutional amendments initiated by the legislature, strong objection is made to the proposal that they pass on constitutional amendments made just as effectively, if not as definitely, by the supreme courts of the different states. The direct advantage derived from the power to recall judicial decisions that declare laws unconstitutional is that it completes the control of the people over the fundamental law of the states. A court, at present, by a single decision, can block progress for years, especially when to overcome that decision a constitutional amendment is necessary and the legislature must be depended upon to start the amendment. One way, in fact, that is used by the opponents of reform is to pass a reform measure in such shape that the courts feel constrained to declare it unconstitutional and thereby necessitate a constitutional amendment and postpone the adoption of the reform for years. Two decisions, one in New York State and one in the United States,

¹ For an interesting development of the whole subject, see Ransom, *Majority Rule and the Judiciary*.

show how important the power of the highest courts in connection with reform legislation is. In the first of these cases,¹ the question was as to the constitutionality of a workingmen's compensation act passed by the New York State legislature giving to injured workingmen the right to collect damages from employers whether their injuries were due to their own negligence, the negligence of the employer, or the inherent risks of the work. The Court of Appeals in New York declared the act unconstitutional in that it deprived employers of property without due process of law. The second case involved the question as to the power of New York State to limit the number of hours a baker might work to sixty hours a week or ten hours a day. The United States Supreme Court² held that to deprive a workingman of the right to labor in a bake-shop as many hours as he chose was an undue interference with his liberty; and, although the statute was passed to protect the baker from protracted work under insanitary conditions, the effort was defeated through the greater zealousness of the Supreme Court to safeguard his welfare. It is on such decisions as these that the voters should be allowed to pass.

Not content with recalling their decisions, some supporters of the progressive movement ask that the judges themselves be subject to recall. Although it is doubtless true that the need of recalling the judges themselves is greatly diminished by providing for the recall of their decisions, it is nevertheless true that a large need for definite control over the judges themselves still exists. Theoretically, it is anomalous to give to any body of officials the enormous power given to judges under our system of government and not subject them

¹ *Ives v. So. Buffalo Railway Co.*, 201 N. Y. 271.

² *Lochner v. New York*, 198 U. S. 45.

to any effective control. In England, where there is no written constitution, the legislature controls the judges. The judges simply interpret the law as it is passed without touching on the right of Parliament to pass it. Here the judiciary frequently reverses the process and controls the legislature. It indicates the limits of the legislature's power and declares void any law that exceeds that power. Practically, moreover, it is unwise not to subject judges in this country to some kind of check or control. Most judges, before they are appointed or elected to the bench, receive their training in the employ of corporations. Corporations do the greater share of the business of the country, offer the largest retainers and give to the young lawyer the best chance to rise in his profession. While there is nothing inherently reprehensible in this situation, its tendency to bias the minds of judges in favor of corporations and property interests as against individuals and human interests is certain to be felt. Moreover, judges who are serving a limited term and who cannot be certain of renomination and reelection look forward to employment by corporations after they have retired from the bench. Here, again, their experience on the bench is most valuable and their services are most highly paid. Accordingly, it is the common practice for judges to step from the courtroom to the office of the great corporations, and the more important the judgeship the greater the demand. Ordinary prudence, therefore, on the part of judges, causes them while in office not to be conspicuous in their opposition to the rights and privileges of corporations. Between training before going on the bench and prospective employment after leaving it, there is apt to be a bias in the minds of judges, which, although it may not be patently dishonest, is nevertheless very real. To counteract this bias, to oppose to the influence of spe-

cial interests a strong public opinion, ready and able to act quickly and effectively, the progressive movement urges the recall.

There is one objection to the recall as applied to judges in addition to those made against direct legislation that deserves special consideration because it is so commonly raised and yet is so thoroughly unsound. The objection is that people ought not to be allowed to recall judges because they cannot pass intelligently upon their ability or their decisions. A complete answer to this objection is found in two facts: first, that a recall election of judges requires no greater capacity for discrimination by the people than an ordinary election of judges, and that, if the people are competent to select judges on one occasion, they are on another; second, that, in about three-fourths of the states, judges are now elected by popular vote. Those who insist upon this objection, therefore, must either adopt the inconsistent and illogical position that the people can elect capable judges at one election, and not at another; or they must advocate the abolition of the elective system entirely and substitute for it a system of appointment.

The third form of the recall, the recall of elective officials other than judges, is the form commonly referred to when the term recall is used. Although this form of the recall has not been so violently opposed as the two already discussed, several important objections have been raised against it. It is contended, in the first place, that it will be used for personal or partisan purposes. So far as use for personal purposes is concerned, a reasonably high percentage and wide publicity seem to furnish sufficient safeguards. No mere clique can muster the twenty-five per cent. of the voters necessary to call an election; and, if they did, a three or four months' campaign would reveal their motives in calling

it. As to the use of the recall for partisan purposes, there is no objection to that so long as it does not unduly interfere with government or put too heavy a burden upon the electors. If the party of any officeholder ceases to be in the majority, there is no good reason why the opposing party, if it is in the majority, should not substitute its representative in his stead. If the number of recall elections is limited and no officeholder is subjected to recall more than once, the use of the recall can work no great hardship. It simply means that the majority is constantly in control. A second objection that seems to have more weight against the recall than against the initiative or referendum is the objection that capable men will not run for office if they are unable to exercise some independence and if their tenure of office is made subject to the passing whims and moods of the people. In answering this objection, it may be repeated that officials are not altogether independent now; that in many cases they are the servants of the boss who nominated them or of the corporations who supplied the funds to win their election. But, assuming that this is not so, and that officials are really independent now, the recall does not make them less so. Most voters do not object to independence in office, provided the independence is used for, rather than against, their interests. The recall is designed not to make men in office less independent, but to remove the dependent. The average voter does not wish to administer or interfere with the details of any office unless it becomes necessary to do so to protect his own interests. So long, therefore, as a man is fearless and honest, the recall does not need to be invoked and usually is not. It is against weaklings and not against strong men that it is aimed. But, to carry the argument still farther and to suppose that the recall did make officials dependent upon public

opinion, there is no inherent objection to that, provided public opinion is properly and adequately expressed. Independence in political office is a fetish so blindly worshiped by many that its true meaning is not clearly perceived. If a governor or legislator were absolutely independent, he would do just as he pleased. Such a situation would be intolerable. Every man in office is prompted by some more or less definite motives, and independence is often made to serve as a cloak for corrupt or selfish practices. Officials are elected to represent and serve public interests; they must be dependent to that extent; and, when they cease to serve those interests or fail to convince their constituencies that they serve those interests, the recall provides the means of removing them and substituting others in their stead.

In practice, in the states that have adopted it, the recall is seldom used and serves more as a threat than anything else. It has been invoked several times in cities to remove officials who were manifestly corrupt and dishonest, but in no case has there been obvious unfairness. While to some this seeming uselessness of the recall is an objection to it, to its supporters it is one of the chief arguments in its favor. Instead of electing officials for short terms—so short that they have scarcely mastered the routine of their departments when they must retire—the recall makes it possible and safe to lengthen the terms, since satisfactory men may be retained and unsatisfactory men removed at any time. Not only can the term of office be increased, but the authority given to officials may be greatly enlarged without fear of any long-continued abuse of power. In the absence of adequate means of control the states have stripped legislators and other officials of as much power as possible. This fact, combined with the fact that to become a candidate for office it has been necessary to

stoop to practices which self-respecting men find hard to tolerate, has kept many competent independent men from office. With the recall in operation as a safeguard, therefore, officials can be offered complete power over a long term of years conditioned only upon its use in the public interest.

A fourth type of the recall is the recall of appointive officials. Fundamentally, this application of the recall is unsound, and is seldom made. All officials should be held responsible to those to whom they owe their positions and not to third persons. To allow the people to remove the secretary of state where that officer is appointed by the governor demoralizes the government. There is, moreover, a practical objection which is even more serious than any theoretical ones. If, when an appointive official is removed, another is elected in his place, the position obviously ceases to be appointive and becomes elective. If, on the other hand, the appointive officer is removed and no one is elected to succeed him, not only is the essential character of the recall as an election lost sight of, but the anomalous situation of one authority filling a position and another emptying it, is created. In watching officials, as in electing them, the fewer there are the better. If a few men are given absolute power of appointment and are held strictly accountable for the acts of those whom they choose, the problem of obtaining efficient appointees will be satisfactorily solved.

The fifth and final form of the recall is an ingenious development in the state of Arizona known as the advisory recall and used to control federal judges and United States senators. Having no power to control federal judges directly, the voters control them indirectly by pledging them to resign if the voters in the district from which they are appointed request it at a

recall election. United States senators whose consent is necessary to the appointment of judges are pledged to refuse to confirm the nomination of any prospective judge who declines to agree to withdraw when the people wish it. The same general plan is used in connection with the United States senators. Candidates for senator are pledged to resign if after they are elected the people of the state demand their resignation. Although there is nothing legally binding about these devices, they nevertheless serve to arouse and direct public opinion and make it almost impossible for a judge or senator to remain in office after the people have shown that he no longer represents them.

In concluding this chapter on the measures of control in the state, it may be pointed out that the difference between those who favor direct primaries, the initiative, the referendum, and the recall and those who oppose them is at bottom a difference of confidence in the ability of the people to govern. Every objection raised against these measures can be traced to a distrust of popular government and a conviction that the best government can be had only when the people elect representatives to do all the governing for them. On the other hand, those who favor these measures do so through a belief in the wisdom of the people and in their ability, not to administer all the technical details of government, but to maintain a general unbroken and sure control over its operations. It is not a question of representative government against a pure democracy as has been so often wrongly assumed; it is a question of the control of representative government in the interests of all the people and not for the benefit of the few.

CHAPTER XII

MEASURES TO PREVENT AND RELIEVE SOCIAL AND ECONOMIC DISTRESS

AFTER the several states have prepared the way by giving to the people direct and continuous control over all the branches of government, they are ready to direct their attention more profitably to the problems connected with the prevention and relief of social and economic distress. Because they are not so strictly limited by their constitutions, because they can more easily amend their constitutions when they are limited, because of the liberal interpretation of the so-called police power, states are able to grapple with modern social and economic problems much more effectively than the federal government can. In spite of the fact that the social phase of the progressive movement in the state is by far the most important—as much more important than the other phases as the end is more important than the means—there is some danger that the emphasis placed upon such preliminary measures as the initiative, referendum, recall, direct primaries and others will cause the importance of these more vital measures of social relief to be somewhat obscured. European countries, where protection against graft and corruption is not so greatly needed, have been far in advance of the United States and of the individual states in social legislation, because much of the energy of political reformers here has been directed toward the

restoration of government to popular control. It is to the progressive movement that credit is due for showing the true significance of remedial legislation and for making of it a clear-cut political issue.

In taking up the work of preventing by legislation suffering and distress—and here as everywhere prevention is worth infinitely more than relief—one of the most important problems which the several states must face is that of child labor. The magnitude of the problem is indicated by the fact that there are at present nearly two million children between ten and fifteen years of age employed in gainful occupations and that the number both actually and in proportion to the total number of children is steadily increasing. Although the census figures for 1910 on this subject are not yet available, an estimate based upon the figures for 1900 indicates that of the two million children at work nearly a million and a half are under fourteen years of age.¹ These millions are not found in any state or sec-

¹ Twelfth Census of the United States, 1900. Special Report—Occupations, p. cxlvii.

Number of children, 10 to 15 years of age, engaged in gainful occupations, compared with total number of children of the same age, for both sexes and for each sex separately, 1880 and 1900.

SEX AND CENSUS YEARS	CHILDREN 10 TO 15 YEARS OF AGE		
	Total	Engaged in Gainful Occupations	
		Number	Per cent.
1900			
Both sexes.....	9,613,252	1,750,178	18.2
Males.....	4,852,427	1,264,411	26.1
Females.....	4,760,825	485,767	10.2
1880			
Both sexes...	6,649,483	1,118,356	16.8
Males.....	3,376,114	825,187	24.4
Females.....	3,273,369	293,169	9.0

tion of the country nor in any single industry. In the shrimp canneries of Maryland, in the mills of Alabama, in the quarries of Vermont, in the mines of Kentucky, in the factories of Illinois, and on the farms of Washington and California, immature children are bearing the burdens of life and labor.

The causes for the present prevalence of child labor and its constant increase are not far to seek. They are chiefly two: an unusual need and an unusual opportunity; need of the parents for the addition to the slender family income which the children by working can make; opportunity to obtain employment because of the great variety of ways in which children can be used in industrial, agricultural, and commercial life. The average wage of 3,297,819 wage-earners included in an investigation, the results of which were published by the Census Bureau in 1908, was \$10.06 a week: for the men \$11.16, for the women \$6.17, and for the children \$3.46.¹ Assuming that the average family is made up of father, mother, and three children and that the father and the mother are both working, on the basis of these averages, the three children by working could increase the family income by more than half. The temptations of parents to avail themselves of the aid which their children can give becomes almost irresistible under modern conditions. Not only do children who do not work fail to add anything to the slender family income, but they actually take substantially from it. If they attend school, clothing and food must be provided, and incidental expenses must be met. The prospect of double gain: the relief of having no longer to supply the children with necessities, and the money added to the family fund after the children have paid

¹ Department of Commerce and Labor, Bureau of the Census, Bulletin 93. Earnings of Wage-earners, p. 11.

for necessities out of their own earnings, is a strong inducement to stop a child's education and send him to work. Then, too, the development of modern industry has had a most potent effect in increasing child labor. In the first place, it has created thousands of positions which children can readily fill. In performing the simpler operations of machinery in factories, in canning shrimps, picking cotton, or making artificial flowers, the child of twelve or fourteen can be as useful as the adult. In the second place, the opportunity to make great savings in the cost of production by obtaining the same work at from half to one-third the price usually paid to adults and thus making it possible for him to compete successfully with his rival has prompted the unscrupulous mill, mine, or factory owner to use children wherever possible. And so between the demands of parents to receive money and the willingness of employers to offer it, an increasingly large number of children are taken from school and home and placed in the workshop and factory.

The effect of child labor upon the children themselves—the arrested physical development, the susceptibility to disease and accident because of fatigue and lack of proper exercise; the stunted intellect causing the children to become unable and even unwilling to learn; the warped moral nature nurturing in the child a spirit of brooding hatred and distrust of society; premature sickness and death—all these are serious enough; but it is on broader ground than this that the progressive movement bases its opposition to child labor. The tendency in government to-day is to give to the people more responsibilities and powers and a greater participation in the solution of political problems, to establish, in a word, a broader democracy. The success of this effort to give the people a larger

part in government will depend upon the intelligence, good sense, and character of the people themselves. And surely no people, a large percentage of whom in their childhood were compelled to work twelve or fourteen hours a day in factory, workshop or mill, who come to manhood with dwarfed bodies, feeble minds, and weak wills, can effectively assume the burdens of a democratic government. The surest support of a democracy, moreover, is a well-ordered system of compulsory public education; and child labor and such a system of education are irreconcilable. Every child that goes to work is a loss to education; and, conversely, every child that remains in school is lost to labor.

Practically every state in the union has realized the importance of controlling child labor and has passed more or less satisfactory laws on the subject. In addition to the fact that parents and employers both insist that child labor is necessary, the reluctance of one state to pass more stringent laws than another lest capital be driven from it makes it difficult to obtain adequate legislation in many of the states. It is doubtless true that mill owners find the cost of production less where child labor may be employed and that in some cases owners have sought the state where the laws were most lax as the best place in which to invest. To remove this difficulty arising from the diversity of state laws, the National Child Labor Committee, organized in 1904 to study the entire question of child labor, has had drafted a model law to be adopted by all the states. The law is based upon a study of the provisions of the more advanced statutes already in force and would do much to remove the worst evils of the child labor problem if it were adopted by all the states.

A first consideration in the attempt to regulate child labor has to do with fixing the ages under which chil-

dren may not engage in different occupations. These ages are fixed for various purposes at twelve, fourteen, sixteen, eighteen, and twenty-one. Boys of twelve are permitted in many states to work at street trades, such as selling newspapers and blacking boots; provided, usually, that they do not work during school hours. Fourteen is the age limit fixed in the case of the simpler and less fatiguing duties in mills, factories, and workshops. Where the work is more dangerous, either because there is liability to bodily injury or exposure to occupational diseases, as in adjusting belts to machinery or manufacturing dyes or paints, the laws require that children be at least sixteen. In the case of labor requiring more endurance and skill, such as running an elevator or trolley car and working on docks and wharves, eighteen years is the minimum age. Finally, where there is danger of moral corruption, as in bar-rooms or other places where intoxicating liquors are sold and in night messenger service, which is perhaps the most blighting morally of all the forms of child labor, progressive states place the age limit at twenty-one years.

A second consideration in connection with child labor legislation has to do with the questions how long and when children should be permitted to work. Eight, and in some cases six, hours a day are fixed as the maximum and one day's rest in seven is required. In the case of girls under twenty-one, where they are compelled to stand continuously, the hours of labor are made shorter than under ordinary conditions. The hours during which child labor is entirely prohibited in some states are from nine at night to six in the morning. Another limitation frequently occurs in connection with street trades where boys in attendance upon school are allowed to work only outside of school hours

and are required to obtain permits and badges so that they may be readily identified.

Having established ages under which children are prohibited from working, the next duty of the state is to limit the hours of labor in the case of those children not included within the prohibition. In fixing the maximum number of hours of labor for children, four factors must be taken into consideration: first, the age of the child; second, the sex; third, the character of the employment; and, finally, the time of day when the work is to be performed. Theoretically, it would seem that the younger the child the lower the maximum number of hours that he should be permitted to work ought to be; and in some states this principle has been followed. But, unfortunately, in many of the states no such distinction has been made. The highest maximum in any state is sixty hours a week and is applied in many states to children under fourteen. The lowest is forty-eight and is applied in every instance to children under sixteen.¹ Sex as a factor in fixing the maximum operates in several instances to raise the age limit within which employees may be worked the maximum number of hours. Thus some states that permit boys under sixteen to work sixty hours a week require that girls attain the age of eighteen before they are allowed to do the same work. In employments, too, where women are compelled constantly to stand, the consecutive hours of labor are sometimes reduced. Finally, girls are frequently limited in the number of hours during which they may work at night. The character of the employment is a third factor that should help to determine the hours of child labor. In the less hazardous industries, in agricultural and domestic occu-

¹ See *Legislative Review*, No. 5. American Association for Labor Legislation.

pations, children may safely be permitted to work longer with much slighter risk of injury than in the case of such dangerous and fatiguing employments as mining and manufacturing. Not only should the possibility of physical injury, but also the exposure to disease be kept constantly in mind. To allow children to work eight or ten hours a day in a poorly lighted, poorly ventilated and foul-smelling room in a tenement or factory is very likely to result in disease and premature death. Lastly, the hours of the day during which children of certain ages may not work are often specifically stated in an attempt to eliminate the ill effects of night work. In some states children under a certain age are forbidden to work from seven at night to six in the morning; in other states, especially those that contain large cities, the hours during which work is prohibited are somewhat fewer. While substantial advance has been made in limiting the hours of child labor, existing state laws still need to be improved in many particulars. Ten hours a day six days a week are too long for children to work in factories and mines while grown men and women are insisting upon an eight-hour day. And working even eight hours a day, breathing the dust of tobacco leaves or inhaling the poisonous fumes of gases and dyes, cannot but have a serious effect upon the constitution of a child. If the child must work, let the work be under sanitary and healthful conditions, and let it not be so burdensome as to prevent entirely the possibility of normal child growth.

To restrict the ages at which children may begin work and to limit the hours of labor is useless unless adequate means are taken strictly to enforce the law. Because parent, employer, and frequently the child itself are interested in evading the law and conspire

to deceive the inspector, it becomes exceedingly difficult to keep track of infringements of the statute. There is, moreover, in many communities, a lack of solid public opinion back of child-labor laws which makes the work of inspectors doubly difficult. One thing would seem to be certain, and that is that the penalties imposed for violation of the law are altogether too small. In most states, a mere fine is imposed, in almost all cases under one hundred dollars and in some instances as low as five, twenty, or twenty-five. Under such a system, a fine, even were it strictly enforced, becomes a license fee and not a penalty; and a license fee, too, which remains unpaid until the violation of the law is detected. The important thing therefore is not to try to punish employers after they have violated the law, but by an efficient system of inspection to keep them within the law. One essential in such an adequate system of inspection is that children be required to attend school up to the age when the child-labor law permits them to go to work. Every child leaving school can then be required to present a certificate from the school authorities to his employer and another to the factory inspector—giving date of birth, extent of education, results of examination to test physical fitness, etc. These certificates should be kept on file by employers in some accessible place in the factory or other place where children are employed; and when children leave should be returned to them and notice sent to the factory inspector. In this way, inspectors can readily check the record of any child suspected of being employed in violation of the law. Employers are often required to keep posted in a conspicuous place near the entrance of the factory or mill a list of children in their employ, and on each floor a schedule of the hours of labor, together with the time allowed for lunch in the

middle of the day. In the case of children engaged in street trades, the most advanced states require that children must obtain a permit and receive a badge which they must wear conspicuously. In this way children under the legal age are effectively kept off the streets.

The steps in the fight for the protection of children so far as labor is concerned are very definite. It is a problem, first, of complete prohibition wherever that is practicable; secondly, of raising the age limit as high as possible; thirdly, of limiting the hours of labor; and, finally, of holding employers and parents strictly to the law. In attempting to extend the provisions of child-labor laws, the objection is commonly raised that it is far better for children to work than to starve; that frequently upon the death of the father, the mother and children are left destitute and if the children are not old enough to work, or, being old enough, are not permitted by the law to work, they must become a public charge. It is to meet this objection and to provide for children in just such circumstances that progressive reformers to-day are advocating a second measure of child welfare, known as mothers' or widows' pensions. The underlying theory of mothers' pensions is not that mothers or widows should be cared for in distress and poverty, but that through subsidies granted by the state they should be enabled to care for and raise children too young to provide for themselves. While the scheme is fundamentally charitable, in that it gives where services have not been rendered, it is nevertheless charity of a hard-headed sort. The purpose is not to pay mothers because they have brought children into the world and have thus rendered a service to the state, but to give to the mother to use in keeping the family together the money which the state would have to pay in supporting children in public institutions. The princi-

ple, therefore, at bottom, is sound. In many instances, mothers who are widowed can, by adding to their own earnings the small funds which the state now pays to public agencies, support and educate their children up to the age where they can provide for themselves; and even where the state is compelled to pay more than the money it is now giving, the superior training in the home and consequently the additional social value of the children more than justify the additional expenditures.

In the five years (1908-1913) since the mothers' pension movement began, twenty states have passed laws on the subject.¹ The persons to whom payments are made under the terms of these laws are usually dependent mothers, including within the meaning of the term not only widows,² but mothers whose husbands are in prison, or the insane asylum, or who have deserted or are incapacitated for labor. In Michigan³ divorced and unmarried mothers are included, and in three states, California,⁴ Colorado,⁵ and Wisconsin,⁶ if the parents are unfit to rear the children, the payments may be made to a guardian. Payments cease in some states⁷ when the child reaches the age of fourteen; in

¹ California, Colorado, Idaho, Illinois, Iowa, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, Ohio, Oregon, Pennsylvania, South Dakota, Utah, Washington, and Wisconsin. See *American Labor Legislation Review*, Vol. III, No. 2, Publication 21, p. 199. See also Bureau Publication No. 7, Children's Bureau, U. S. Department of Labor.

² The New Jersey law is limited to widows. *Laws of New Jersey*, 1913, C. 281.

³ Public Acts of 1913, No. 228.

⁴ Session Laws of California, 1913, C. 323.

⁵ Session Laws of Colorado, 1913, p. 694.

⁶ Session Laws of Wisconsin, 1913, C. 669.

⁷ California, Illinois, Iowa, Massachusetts, Minnesota, Missouri, South Dakota, and Wisconsin.

three states when he reaches fifteen;¹ in four states when he reaches sixteen;² in one state, Michigan, when he reaches seventeen; and in two states when he reaches eighteen.³ In the other states, Ohio and Pennsylvania, the payments cease when the children arrive at the legal working age.

The amount of payments given to destitute mothers varies greatly in the different states. Iowa and Michigan allow two and three dollars a week respectively; in California twelve dollars and fifty cents a month are allowed, one-half of which is paid by the state and the other half by the city or county. New Jersey allows nine dollars; Idaho, Minnesota, Missouri, Nebraska, New Hampshire, Oregon, and Utah, ten; Pennsylvania and Wisconsin, twelve; Ohio, South Dakota and Washington, fifteen dollars a month. In the other states where pension laws are in force, the amount of the pension is left to the discretion of the body in whose charge the administration of the law is placed. Where there is more than a single child, the amount allowed for each additional child varies from five to twelve dollars a month.

The general conditions under which pensions are granted are indicated by the provisions in the Ohio statute.⁴ They are as follows:

“First—the child or children for whose benefit the allowance is made must be living with the mother of such child or children;

Second—the allowance shall be made only when in the absence of such allowance the mother would be required to work regularly away from

¹ Idaho, Utah, and Washington.

² Colorado, New Hampshire, New Jersey, and Oregon.

³ Nebraska and Nevada.

⁴ Laws of Ohio, 1913, p. 878.

her home and children, and when, by means of such allowance, she will be able to remain at home with her children, except that she may be absent for work at such times as the court deems advisable;

Third—the mother must, in the judgment of the juvenile court, be a proper person, morally, physically and mentally, for the bringing up of her children;

Fourth—such allowance shall, in the judgment of the court, be necessary to save the child or children from neglect and to avoid the breaking up of the home of such woman;

Fifth—it must appear to be for the benefit of the child to remain with such mother;

Sixth—a careful preliminary examination of the home of such mother must first have been made by the probation officer, an associated charities organization, humane society, or such other competent person or agency as the court may direct, and a written report of such examination filed.”

Mothers' pensions, in the last analysis, are but a kind of charity; and it is on this ground that the strongest and most convincing objections to them have been made. Where the charitable nature of the relief is unduly emphasized, as, for example, in the New Jersey law, it becomes odious to self-respecting women to apply for or accept it, and thus the act tends to defeat itself. And even where the real nature of the payments is concealed by a skillful use of terminology, and every means is taken to avoid subjecting the recipients of the state bounties to disgrace, mothers' pensions inevitably tend to pauperize and lower the standards of self-respect. It has been suggested by Dr. Edward T. Devine, who has

pointed out the weaknesses of mothers' pensions with greater effectiveness than any other writer on the subject, that there might be substituted for mothers' pensions a scheme of social insurance that would retain all the advantages of the present plan and eliminate practically all of its defects. All employees, employers, and perhaps the state as well might contribute to a pension fund upon which destitute mothers would have a legitimate claim. The burdens in this way would be distributed among the members of the entire community, and those that accepted payments would no more suffer disgrace or humiliation than the beneficiaries of life insurance. It is altogether likely that the principle of mothers' pensions has come to stay; and the chief problem now is to apply the principle with the greatest effectiveness.

Another measure for the prevention of social distress which has become a part of the progressive movement is that establishing a minimum wage. Primarily, minimum wage laws are intended to protect girls and women from the consequences of inadequate compensation; but there is also a tendency to extend its application to include all workers. The agitation in this country for the fixing of a minimum wage had its origin in a belief that has become widespread in recent years, that there is a close connection between immorality and the poor wages which young working girls receive. Many department stores in large cities pay only three, five, or eight dollars a week to salesgirls, and out of this small wage in many instances the girls must feed, clothe, and house themselves. The assumption that the virtue of young women is dependent upon the wages received is vigorously combated in many quarters. While there has undoubtedly been much exaggeration of the dangers to which young working girls who receive small

pay are exposed, it is nevertheless true that virtue becomes repulsive and vice attractive when the one means poverty and hardship and the other ease and comfort. Young girls do not yield to a life of vice directly because of low wages, but low wages and their consequences weaken the power of resistance and make it easier to do so. At first there is but an occasional misstep, to obtain some luxury or pleasure which a small income cannot provide; in many cases, wrongdoing is completely concealed and intermittent indulgence in vice is used to supplement wages; but too often the life proves too attractive and too easy and girls succumb entirely.

Minimum wage laws are now in force in nine states,¹ all of them having been passed in 1913. In every state the benefits of the law are restricted to girls and women, indicating that the usual motive in passing such laws is to remove a contributory cause of immorality. In practically all the states, the minimum wage is not fixed by the statute, but is left to the discretion of the body that administers the law. It is, however, usually specified that girls and women must be paid a "living wage." The administration of the law is ordinarily placed in the hands of a commission, specially created for the purpose in some states, and already in existence in other states for other purposes. Violations of the law are punished by heavy fines and in some instances by imprisonment.

The most important objections made against the minimum wage are three: first, that many employees, unable to meet the increased requirements of efficiency that will necessarily follow an increase in wages, will be thrown out of employment; secondly, that certain

¹ California, Colorado, Massachusetts, Minnesota, Nebraska, Oregon, Utah, Washington, and Wisconsin.

industries may be forced to discontinue because of the inability of employers to pay the minimum wage; and, thirdly, that all wages will tend to be reduced to the minimum set by the law. That employers will demand higher standards of employees if they are compelled to pay higher wages is certain; and that employees unable to meet the new requirements will be thrown out of work is also certain. But the solution of this difficulty lies in one of two directions. Either employees will find the kind of employment in which they are sufficiently well equipped to earn a living wage, or the state will have to face the fact that many employees cannot earn a living wage at present and will have to provide for them through better industrial and vocational training, by public employment, pensions systems, or in some other way. To prohibit its citizens from accepting wages below a certain standard places the state under an obligation to provide for those who cannot meet those standards. It accentuates the difficulties of the whole labor problem and makes more imperative the need of a solution. It is the business of society to do what it can to insure to each of its members the means of existence and a minimum wage law is a definite step in that direction.

That the enforcement of a minimum wage law compels certain employers, because of increased expenses, to go out of business, is an objection that is more apparent than real. It is a trite paradox that cheap labor is in the long run the most expensive labor and that one way to reduce expenses is to increase wages. Higher wages command more efficient employees and enable employers to reduce working forces. Moreover, there is an *esprit de corps*, a devotion to work, and a willingness to sacrifice self in the interests of employers that is found in establishments where employees are

well paid that is an invaluable asset. But, assuming that certain industries might be compelled to discontinue if compelled to pay employees a living wage, no very strong objection can be raised against allowing them to do so. If industries can exist only at the expense of wrecked, poverty-stricken lives, then surely our present civilization cannot tolerate their continuance at such a costly sacrifice. If women must work—and in this age it seems inevitable that they should work—let them be paid for their work a sufficient wage to allow them to live decently and comfortably.

The third objection against the minimum wage, that where the law prescribes definite wages, employers will tend to pay no higher wages, seems at first glance to have a great deal of weight. If employers, by using the law as a standard, can reduce their expenses, there would seem to be no good reason why they should not do it. But competition under a minimum wage law will still be an important factor and will make impossible the reduction of all wages to the level imposed by the law. This will be especially true because competition will be keener than at present among the employees that remain after those that cannot meet the increased efficiency tests have been eliminated. Practical experience, moreover, seems to indicate that no fear need be entertained. Professor Seager, writing on this point, calls attention to the fact that "in Victoria, after the minimum wage system had applied to the clothing industry for half a dozen years, the average wage for women was reported at 42s. 3d. a week, as compared with the prescribed minimum of 36s., and the average for men as 53s. 6d., as compared with the legal minimum of 45s. An average nearly twenty per cent. higher than the minimum is pretty conclusive evidence that wages continued to vary with the individual ca-

capacity of the workers after the minima were prescribed, as they had done before.”¹

That minimum wage laws are destined to play a large part in preventing human waste and distress seems certain. By separating those who cannot earn a livelihood by their own efforts with their present training from those who can; by exposing the industries that thrive on the sacrifice of underpaid men and women; by showing up defects in our educational system that turns children out into the world without the ability to support themselves; by forcing the state to accept the responsibility and solve the problem of the unemployed—minimum wage laws are rendering invaluable assistance in removing causes of degradation and suffering.

In addition to passing child-labor laws, mothers' pensions laws, and minimum wage laws, modern society, in its attempt to prevent waste of human resources, is giving a great deal of attention to the problems of factory regulation and inspection. After many years of neglect, the states are coming to the conclusion that they cannot afford to allow millions of their citizens to work in factories where they are subject to accident, sickness, and death through the failure of employers to provide adequate protection. The great social loss that results from inadequate factory regulation, the increasing knowledge concerning the preventability of accident and disease, and the helplessness of the individual workers have combined to arouse the public conscience to the need of treating the factory problem as one that requires the most effective public control.

Broadly considered, the factory question, so far as the prevention of the waste of human resources is concerned, presents two sets of problems: first, problems

¹ *The Theory of the Minimum Wage, Am. Labor Leg. Review*, Vol. III, No. 1, p. 89.

of legislation; second, problems of inspection. Laws are needed to prevent accidents. So much attention is being given to compensation for accidents sustained that there is some danger lest it be forgotten that a very large percentage of the accidents that now occur can be prevented and that it is of the utmost importance that as many of these as possible be prevented. Every factory should therefore be equipped with the most improved safety devices to protect employees from mishap from machinery and frequent inspection of machines should be required. To prevent the accidents due to panic in case of fire, the number of workers in factory buildings should be strictly limited, according to the amount of floor space and the width of stairways; a sufficient number of enclosed fire escapes of reasonable width should be provided; the most improved sprinkler system should be installed; doors should be unlocked and should open outward; and frequent fire drills should be held.

Equally important with safeguarding factory employees against physical injury or death is their protection against preventable diseases. The diseases to which workmen are subject may be classified as general and occupational, understanding by general those caused by conditions of light, air, and sanitation, such as tuberculosis, rheumatism, nervous diseases, and the like; and by occupational diseases those that are due particularly to some occupation or trade, as miners' asthma, glass blowers' cataract, hatters' shakes, phosphorous poisoning, and similar afflictions. To protect employees against the first class of diseases, the window and other light area of factories needs to be definitely fixed so as to insure natural lighting a reasonably large portion of the day; employees should be limited in number so that each may have an adequate supply of air; and a well-

equipped system of sanitation should be required. The solution of the problems raised by occupational diseases is much more difficult. First of all, scientific investigation of such diseases and their remedies is needed. "There is no modern treatise on the subject by an American authority on industrial hygiene, and the occasional official investigations which have been made into health conditions of particular trades only emphasize the necessity of a more thorough and strictly scientific inquiry by national authority."¹ Only on the basis of the fullest scientific data can any attempt to legislate on the question be successfully made. After such an investigation has been made, society may find it advisable to prohibit certain of the more dangerous industries entirely; just as it has already forbidden the use of phosphorus for match tips. That thousands of men and women should every year be offered up as sacrifices in the manufacture of any products seems a reproach upon our modern civilization. The least that the state can do is to spare no pains or expense in an attempt to eliminate these frightful diseases entirely or at any rate to abate the ravages which they now make.

There is to-day not so much a lack of laws on the statute book regulating work in factories as there is a lack of inspection and enforcement of laws already passed. The meagerness of the factory inspection provided at present is indicated by the fact that there are only about four hundred and twenty-five factory inspectors in the whole country to care for nearly seven million factory workers and that in fourteen states with 474,000 factory workers not a single factory inspector is provided. And even in those states where

¹ Memorial on Occupational Diseases, prepared by a committee of experts and presented to the President of the United States. *Am. Labor Leg. Review*, Vol. I, No. 1, Pub. 12, p. 129.

inspection is provided it is not efficient. In the first place, not enough inspectors are appointed to permit inspections sufficiently frequent to count. In the second place, salaries paid are altogether too small to attract competent men. It is little short of ridiculous to pay a man \$1,200 or \$1,500 a year to protect the health and lives of thousands of workmen. In the third place, inspectors are not thoroughly acquainted with the statute that forms the basis of their inspection and consequently are unable to detect violations readily. In the fourth place, in the great majority of the states, no preliminary examination is held to test a candidate's general knowledge of factory conditions. Even the simple details of inspection require a knowledge of machinery, architecture and sanitation, and the more difficult problem of occupational diseases and their causes requires expert medical knowledge. The inefficiency of inspection made by political appointees, even if they devoted themselves conscientiously to their work, is apparent. In the fifth place, the fine usually imposed for violating the statute is so small that it is regarded rather as a license than as a penalty. With the few inspectors at present employed, each factory can be visited only at long intervals, and, even if the employer is fined as a result of each visit, he is content to pay the money for the privilege of violating the law between inspections.

The great interests at stake require that these breaches in the present system of factory inspection be repaired at the earliest possible moment. A sufficient number of inspectors should be employed to make at least monthly inspections possible; large enough salaries should be paid to enlist the services of trained experts, and to every force of inspectors there should be added a corps of doctors with special knowledge con-

cerning occupational diseases. Searching examination should be made of a candidate's knowledge of factory laws and factory conditions not only before appointment, but periodically after appointment to test the inspector's knowledge of changes that may have taken place. Employers found guilty of violating the statute should be held criminally liable and subject to a severe punishment. Most important of all in factory regulation is cordial and sympathetic coöperation on the part of employer, employee, and inspector in carrying out the law. Too frequently, through misunderstandings that never should arise, these three classes work at cross purposes. Employers can be made to feel not only a sense of moral responsibility for the welfare of their employees and a legal duty to obey the law, but also the economic advantage of taking the best care possible of their men and women. Employees can be consulted concerning improvements that are needed to make laws and inspections more effective and can be encouraged to report violations to employers and to inspectors. This interchange of ideas and suggestions can be accomplished through the medium of circulars printed perhaps partly at state expense and partly at the expense of employers and distributed among the workmen in the various trades and occupations. These circulars might contain news concerning the most recent laws, the latest safety devices, the means of preventing accidents, the causes of occupational disease and other information of a similar character. It is only by treating the factory problem as every one's problem, as a social and not as an individual problem, that substantial progress can be made in the direction of greater protection of the life and health of workmen.

The subjects thus far discussed in this chapter, child labor, mothers' pensions, minimum wage, and factory

regulation, have emphasized the need of preventing the waste of human resources in industrial work. There remain to be considered certain measures that have come into prominence in recent years in connection with the progressive movement which have as their object the relief of unavoidable social distress. Most important of these measures, because of the change they have wrought in the law governing the relations of employer and employee, and because of the definiteness of the relief which they afford, are employers' liability, workmen's compensation, and state insurance acts.

Under the common law which remained unchanged in most of the states until well on into the nineties and which is still in force in some of the states, an employer owes his employees three duties so far as the prevention of accidents is concerned: first, to use reasonable care to make the place of work safe; secondly, to use reasonable care to provide safe tools and machinery with which to work; and, finally, to use reasonable care to hire only competent fellow-workmen. That an employee is injured because of unsafe surroundings, defective machinery, or careless fellow-workmen is no guaranty that he can recover; the responsibility of the employer ends with the exercise of "reasonable care." In bringing an action to recover for injuries sustained, therefore, the employees are required to show clearly that the injury was caused by the violation of one or more of the duties of the employer. In defending an action against injured employees, on the other hand, employers are allowed to use any of three so-called "common law defenses"; in the first place the employer may claim that the employee has voluntarily assumed the risk incident to his employment; in the second place, he may contend that the injury was caused entirely or partly by the injured employee's own negligence; or, finally, he may set

up in defense that the employee was injured through the carelessness of a fellow-servant with whose habits and failings the injured employee should have been familiar. Under modern industrial conditions these provisions of the common law have been completely outgrown. It is brutal to tell an injured mill or machine operator who is fitted for only the one occupation in which he is engaged, that he cannot recover for his injury because he knew the risks when he entered the work and if he did not care to assume them he should have chosen something less dangerous. It is inhuman to tell a maimed or crippled dye-maker or loom operator who through fatigue or exhaustion may have been momentarily careless and suffered a mishap, that he can receive no compensation from his employer during a long period of enforced idleness. And, finally, it is absurd to place upon any single employee in a great corporation like the United States Steel Corporation or the Southern Pacific Railroad the obligation to familiarize himself with the habits of thousands of his associates in order that he may prevent injury to himself through their carelessness. Where these common-law defenses are in force, in many cases employees cannot recover at all for injuries sustained; and where they do manage to overcome, with great difficulty, the opposition of the highly paid, skilled lawyer of the corporation which they are suing, the money they receive is soon exhausted in paying counsel fees and other expenses incident to bringing the action. During the weeks, months, and even years immediately following accidents, when money is most needed, injured workmen and their families are forced to accept charity or break up the home.

The first modification of the common law is usually accomplished by the passage of employers' liability acts.

These acts still make it necessary for injured employees to apply to the courts for compensation for injuries, but make it easier for them to recover by changing the defenses of the employer in several substantial particulars. The employee is no longer presumed to have voluntarily assumed the risks incident to his employment; the so-called fellow-servant doctrine is abolished; and the contributory negligence rule is modified so as to allow an employee to recover where he has not been culpably careless. The burden of proof, moreover, is shifted from the employee to the employer and the latter must show that he was not negligent and that his employee was; reversing the former practice of requiring the employee to establish the fault of the employer and his own freedom from neglect.

Employers' liability acts, much as they improve the conditions previously existing, are defective in three fundamental respects. In the first place they retain the court trial with all its delays and expense. The amount of money left, after the different fees are deducted from the sum recovered, is small and comes too late to be of the most assistance. In the second place, the determination of the amount of money to be recovered is left in the hands of a jury instead of being fixed by law. This practice results in as great unfairness to the employer as it does to employees, because an over-sympathetic jury is very apt to award an abnormally large verdict in a given case and cause serious financial embarrassment to an employer. The employee suffers, too, chiefly from the uncertainty as to the amount he is to receive. In many cases it is just as likely to be six cents as six dollars or six thousand dollars. In the third place, no guaranty is provided that the employee will be paid even if he does recover. In a general catastrophe, such as an explosion

in a mine or a fire in a factory, several hundred may be killed and injured. To place upon an employer the obligation to pay compensation to all those injured workmen and their families often results in his bankruptcy and inability to meet all claims upon him.

To remedy these defects of employers' liability acts, twenty-five states¹ have passed workmen's compensation acts. These acts are based upon the theory that the losses suffered by workmen because of injuries are social losses and should be added to the cost of production and borne by the community as a whole. Every effort is made, therefore, to pay the injured workmen promptly a fair sum proportioned to the seriousness of his injury, the financial loss caused by his disability, and the length of time during which the disability continues. Court trials are abolished and usually a commission is appointed to take their place in administering the act. Payments are definitely stated and provision is made against possible inability of the employer to pay. The operation of a typical act is as follows: within a reasonable time after receiving an injury, unless it results in death or disability, the employee is required to notify the employer of the facts of the accident and of his claim for compensation. If the employer and employee fail to agree as to the right of the employee to recover or the amount which the employee is entitled to receive, in some states the matter is arbitrated by a board of three, one member of which is elected by the employer, one by the employee, and the third by the other two. In

¹ Arizona, California, Connecticut, Illinois, Iowa, Kansas, Indiana, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Washington, West Virginia, and Wisconsin.

some cases the award of the arbitration board is final except for fraud or mistake; in cases where it is not an appeal usually lies to the compensation commission itself. Only in exceptional cases can an appeal be carried beyond the commission into the courts. In practically every case the only defense which the employer can interpose is that the employee was guilty of gross or willful negligence and clear evidence is required to establish that fact.

The feature of workmen's compensation acts that is most characteristic is the payment of stated sums instead of indefinite amounts to be determined by a jury or commission. To prevent malingering, these payments do not begin until a prescribed period, usually two weeks, has elapsed after the accident. In case of death, a distinction in the size of payment is made in the case of those leaving persons wholly dependent, those leaving persons partly dependent, and those leaving no dependents at all. In the first case, the weekly wage of the dead workman is allowed for a given period of years, in most cases three. In the second case, the payments are made in proportion to the relative dependency of the survivors. And, in the last case, an amount to cover reasonable medical attendance and the cost of burial is allowed. In case of total disability, a certain percentage, usually fifty, of the workmen's wages not to exceed a certain amount—usually \$10—nor to fall below a certain amount—usually \$4 or \$5—is paid up to a maximum number of weeks—ordinarily from 300 to 500—until a maximum amount—usually \$3,000 or \$4,000—has been reached. Where the disability is only partial, a certain percentage, in most cases fifty per cent., of the impairment of earning capacity is allowed. In many statutes provision is made for the compensa-

tion in specific cases such as the loss of hand, leg, thumb, and eye.¹

Important as it is that the amount of compensation should be definitely stated and not left to the whim of a jury or commission, it is even more important that the payment of the compensation by the employer be secured. This is accomplished by requiring employers to satisfy the workmen's compensation commission that they are responsible; or, failing that, by requiring them to insure in a liability or mutual insurance company. Where insurance is taken out, considerable difficulty arises in the adjustment of premiums because of the different rates of compensation in the various states. A man employed by a Wisconsin corporation may be injured while in New York and elect to sue in that state. Inasmuch as the rates there are higher than those in Wisconsin, a premium paid by the corporation on the basis of Wisconsin rates of compensation would be insufficient to cover the amount the employer would have to pay under the law of the other state. This difficulty is one which uniformity in the laws of the different states alone can solve.

Having passed from common law liability to employers' liability and then to workmen's compensation, in evolving an adequate system of relieving the distress caused by injuries to workmen, the progressive movement proposes one step more; i. e., from workmen's compensation to state insurance. By state insurance is not meant a system similar to that in the state of Wash-

¹One of the most recent acts, that passed in New York State in December, 1913, allows the following maximum amounts:

Thumb.....	\$900	Other toes.....	\$240
First finger.....	690	Hand.....	4,800
Second finger.....	450	Arm.....	6,240
Third finger.....	375	Foot.....	4,100
Fourth finger.....	225	Leg.....	5,760
Great toe.....	570	Eye.....	2,560

ington, where the employee contributes nothing to the fund; but rather a system like that in Oregon where employer, employee, and state together contribute. There is danger in passing a great amount of remedial legislation lest employees be pauperized by charity. What the progressive movement stands for in advocating the relief of industrial distress is not paternalistic charity by the government, but a helpful coöperation on the part of all the elements of society to make the workman's burden less heavy. A system of state insurance to which employees as well as employers contribute is greatly superior to workmen's compensation because it gives the employee an interest in the fund and consequently in reducing the number of accidents and keeping the premium down. It changes him, too, from a recipient of a benevolent charity into an independent workman contributing with his fellow-workmen toward his own support in case of injury or disability.

In line with a system of state insurance to protect workmen against the worst consequences of accidents is a system of state insurance to protect them against the rigors of old age. Such a plan is already in operation in several European countries and before long will have to be taken up here. Rightly organized, old age insurance is neither paternalistic nor socialistic; and is therefore a great improvement over a system of old age pensions. Employees might be required to contribute a small percentage of their savings to a state fund which might be supplemented by appropriations from the state treasury. Upon proof of service covering a given period of years, workmen might then be allowed a retirement pension based upon the average income during the period of service. Such a system tends to remove the terrors of unemployment in old age and to encourage steadiness in workmen; but most important of all, it

recognizes and discharges in an effective way an obligation which society and the state owe to every citizen who by long years of labor has contributed to the general welfare.

The task of the progressive movement in the state is very plain and very definite. It must give to the people a real control over government at all times: before election by direct primaries, corrupt practices acts, the short ballot, the Massachusetts ballot, and an effective registration system; and after election by the initiative, the referendum, and the recall. It must then use the government, thus restored to the people, to prevent and relieve social and industrial distress: to prevent distress by saving the life of the child through stringent child labor laws; by giving to the child the benefit of the uplifting home influence as long as possible through a system of mothers' pensions; by protecting men, women, and especially young girls, through a minimum wage law, from sacrificing their manhood and their womanhood, and by adequate factory regulation and inspection; and, finally, when bones are broken and health is gone, to relieve distress by placing upon the shoulders of society a part of the burden which the individual hitherto has borne.

PART IV

THE PROGRESSIVE MOVEMENT IN THE
CITY

CHAPTER XIII

MUNICIPAL HOME RULE

No proof is required to-day to support the claim that the city is as important in our political life as the nation or the state. Indeed, it would not be impossible to support the thesis that the city is the most important of our political divisions. At present nearly one-tenth of the total population of the country lives in three cities, New York, Chicago, and Philadelphia. In 1910 the percentage of the total population residing in cities of 2,500 or more inhabitants was 46.3. But it is not alone the size or number of cities that makes them worthy of attention. They are especially important because they so vitally touch and affect the life of every citizen. Where the average citizen comes in contact with the state or national government at one point, he comes in contact with the city at a hundred. Whether water is pure or impure, whether milk is adulterated or unadulterated, whether fires are few or many, whether air is fresh and clear or laden with soot and smoke, whether citizens are happy or unhappy, whether they live or die—the city largely determines. *Every second individual passes his life in the city.* It is literally, startlingly true that the city is the hope of democracy. It may not be true that all will prosper if the city prospers. But it is true that if the city fails all will fail with it.

In a study of progressive principles, the city is as important as the nation or the state, and in some respects more so; for practically every fundamental problem of government that arises in the larger political divisions arises in the city; and because of the smaller extent of the latter and its more direct contact with its citizens, each problem is apt to be more definite and more easily recognizable. In working out the relation of government to public utilities, in experimenting with new and simpler structures of government, in reducing the size of ballots, in fixing the extent and methods of socialization of government—cities are meeting and solving problems which the state and nation must also face. The city is the workshop, the experiment station of democracy.

In the nation and the state, as we have seen, the phases of the progressive movement are three: removing corrupt, special influence from government; modifying the structure of government so as to make it easier for the people to control; and using the government so restored to the people to relieve social and economic distress. In the city, while the phases of the progressive movement are essentially the same, there are certain minor differences that require comment.

The first problem of the city, as of the nation or the state, that would be progressive, is to become free. But because of the peculiar position which cities occupy in our scheme of government, freedom in the case of the city means more than it does in the nation or the state. It means that the city must not only shake off the invisible influences within its own limits that seek to control it for their own gain, but that it must go farther and insure itself against unjust and wanton interference with its affairs by those without its walls, in some instances hundreds of miles away. To realize itself

fully, a city must, in so far as the exercise of purely local functions is concerned, be free from the domination of the state legislature—must, in other words, have municipal home rule.

Once freed from the domination of special influence and from the interference of the state legislature, however benevolent and well-intentioned that interference may be, the city is ready to modify its machinery of government so as to make it more readily controllable by its citizens. Expressed in other words, the progressive city should, as a second step, adopt that form of city charter that will afford to its voters the largest opportunity for direct and effective participation in municipal affairs.

A third phase of the progressive movement in cities—a phase which does not appear to so great an extent in the nation and state—is the so-called efficiency movement. The thesis of the rapidly increasing body of men who support the efficiency movement in city government is that running a city is like running a business and that the success of the one, as the success of the other, depends very largely on efficient and economical organization and methods. Even a city with model machinery of government—as for example a city operating under the commission or city manager plan—may have an exceedingly weak government if the machinery is not effectively operated.

A fourth and final phase of the progressive movement in city government is the socialization, so far as practicable, of the city's activities. Municipal home rule, simplified city charters and efficient administration are not ends in themselves, but merely means to an end. The real end of government is to serve the people; and for that reason the progressive movement in the city purposes to extend the functions of city

government to promote the welfare and comfort of its inhabitants so far as it is compatible with a free government and democratic institutions.

Unless there is a provision in the state constitution to the contrary, every city is under the complete control of the legislature. This means that the state can prescribe the city's charter, determine the number and kind of functions which the city may exercise, and the manner of exercising them. On the relation of the city to the state, Judge Dillon, in his book, *Municipal Corporations*,¹ says: "It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others. First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporations not simply convenient, but indispensable. Any fair reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied. Of every municipal corporation the charter or statute by which it is created is its organic act. Neither the corporation nor its officers can do any act or make any contract or incur any liability not authorized thereby, or by some legislative act applicable thereto. All acts beyond the scope of the powers granted are void."

Speaking on the same point, Goodnow in his *Municipal Home Rule*² says: ". . . These bodies (i. e., cities) have, except as to their property rights, no legal claim to protection under the general clauses in the American constitution guaranteeing private rights. At quite an early date in our history the United States Supreme

¹ Dillon, *Law of Municipal Corporations*, 4th ed., p. 145. Quoted by Goodnow, *Municipal Home Rule*, p. 45.

² P. 31.

Court intimated that municipal corporations, except so far as their property rights were concerned, were to be regarded as governmental agencies rather than as legal persons, and therefore subject to legislative regulation." A quotation from the United States Supreme Court is worth noting. "A municipal corporation . . . is a representative, not only of the state, but is a portion of its governmental power. It is one of its creatures made for a specific purpose, to exercise within the limited sphere the powers of the state. The state may govern . . . the local territory as it governs the state at large. It may enlarge or contract its powers, or destroy its existence."¹

In the absence of constitutional prohibition, therefore, there is no limit to the number and no qualification of the kind (save that private property is protected) of acts concerning cities which the legislature may pass. A few examples will suffice to show to what extent the legislatures have gone in their attempt to control cities, usually for selfish and corrupt purposes. In 1870 the state legislature of Pennsylvania passed an act appointing certain persons commissioners to take charge of the construction of a new city hall in Philadelphia. The act states that "said commissioners shall make requisition on the councils of said city, prior to the first day of December, in each year, for the amount of money requisite by them for the purpose of the commission for the succeeding year; and said councils shall levy a tax sufficient to raise the amount so required. . . ."² In spite of a provision in the state constitution³ that "no debt shall be contracted, or liabil-

¹ Goodnow, *Municipal Home Rule*, p. 30, footnote.

² Session Laws of Pennsylvania, 1871—Appendix, 1870, pp. 1548-9, No. 1404.

³ Art. XV, Sec. 2.

ity incurred by any municipal commission except in pursuance of an appropriation previously made therefor by the municipal government," the Supreme Court of Pennsylvania¹ decided that the municipal government could, by mandamus, be compelled to make the necessary appropriation. And so a city already burdened with debt was placed at the mercy of an irresponsible commission appointed by the state and given great authority over the city's resources.

Another remarkable instance of wanton interference by the state legislature in the affairs of a city is furnished by the city of Pittsburgh.² For many years the city had been under the domination of several political "bosses." About 1900 a reform movement was started and the bosses were ousted. Nothing daunted, the bosses carried the struggle to the state capital at Harrisburg and induced the legislature to revoke the charter of Pittsburgh and pass a new one under which they might regain control. The new charter provided that the governor should appoint as the executive head of the city a recorder who should have the power to appoint the heads of the city departments. The governor appointed a recorder favorable to the defeated bosses, and the recorder in his turn through his control of the city appointments restored the bosses to power.³

More recent illustrations of unwarranted interference by the state legislature with municipal affairs may be found in current session laws of almost any state. For example, in Massachusetts in 1912 the special legislation includes an act relative to the retirement of cer-

¹ In *Perkins v. Slack*, 86 Pa. 270.

² For a picturesque account of municipal corruption in Pittsburgh, see *McClure's*, Vol. XXI, p. 24: *Pittsburgh: A City Ashamed*, by Lincoln Steffens.

³ Act of the General Assembly No. 14. Approved March 7, 1901.

tain veterans in the service of the city of Lynn;¹ an act to authorize the city of Boston to pension the widow of Daniel T. Dineen;² and an act to authorize the laying out of a street over a part of Mugford Park in Marblehead.³ To check legislative interference that was running riot, many states very early found it necessary to restrain the state legislature by means of the state constitution. The earliest of these constitutional restraints was the prohibition against the enactment by the state legislature of so-called special legislation, i. e., legislation affecting a single city. These special acts aimed at by the provision in the state constitution were of three different kinds: special acts incorporating cities; special acts amending or modifying the charters of cities; and special acts regulating the local or internal affairs of cities.

The provision concerning special legislation in the New York constitution is particularly worthy of notice. Art. XII, Sec. 2, provides: "After any bill for a special city law, relating to a city, has been passed by both branches of the legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of such city, and within fifteen days thereafter the mayor shall return such bill to the house from which it was sent . . . with the mayor's certificate thereon, stating whether the city has or has not accepted the same. In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof concurrently shall act for such city as to such bill. . . . Whenever any such bill is accepted as herein provided, it shall be subject as are other bills, to the action of the governor. Whenever,

¹Chap. 55, Laws of 1912.

²Chap. 85, Laws of 1912.

³Chap. 65, Laws of 1912.

during the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the legislature, and it shall then be subject as are other bills, to the action of the governor."

Prevented from controlling cities through special laws applicable to only one city, the state legislatures, to control the cities at all, had to control them through general laws.¹ In most cases, the state constitutions in forbidding the legislatures to enact special laws direct them to pass general acts, applicable to a class of cities instead of to one. The theory back of the requirement that the legislature enact only general laws is, of course, that charter tinkering and special jobbing are more difficult when the legislature is dealing with all cities or all cities of a particular class, than when it is dealing with only one city. The legislatures, however, have overcome the difficulty very readily. Some of the state constitutions, in directing that cities be classified, direct the legislature to classify in proportion to the population of the cities and to make no more than a certain number of classes. Most of the provisions, however, place no limit on the number of classes which the legislature may create. The legislatures, with their usual keenness where political gain is concerned, have been quick to take advantage of the opportunity. They have made so many classes that in some cases each important city in the state is in a class by itself. By providing for eight or ten classes and grading the classes properly, the legislature has nullified the constitutional prohibi-

¹ The constitution of New York State (Art. XII, Sec. 2) defines a general law thus: "General city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class."

tion against special legislation and may now by stating that a particular law applies to "all cities of the first class," conform to the letter of the constitution, but by placing only a solitary city in that class violate its spirit.

The conditions that existed in Ohio up to eight or ten years ago illustrate very well how easily state legislatures may make nugatory prohibitions against special legislation. The constitution of Ohio adopted in 1851 enjoined the legislature from passing any special legislation for cities and required the enactment of general laws. The state legislature divided the cities into classes as follows.¹

CLASS I

- Grade 1. Over 200,000 (Cincinnati).
- Grade 2. From 90,000 to 200,000 (Cleveland).
- Grade 3. From 31,500 to 90,000 (Toledo).
- Grade 4. Those promoted from Class II (None).

CLASS II

- Grade 1. From 30,500 to 31,500 (Columbus).
- Grade 2. From 20,000 to 30,500 (Dayton).
- Grade 3. From 10,000 to 20,000 (Youngstown).
- Grade 3a. From 28,000 to 33,000 (Springfield).
- Grade 4. From 8,000 to 10,000 (Four cities).
- Grade 4a. From 8,330 to 9,050 (Ashtabula).

The Ohio situation was somewhat extreme and yet similar classifications have been made in other states to

¹ Report of the Municipal Home Rule Committee of the Municipal Association of Cleveland, 1912, pp. 10-11.

comply with the letter of the constitution and evade its spirit. Cities in New York State are divided into three classes. Cities of the first class are cities having a population of 175,000 or more. Only three cities come under this class, i. e., New York, Buffalo, and Rochester. In Alabama, a general law providing for commission government was passed for cities of 100,000 and more. Birmingham is the only city affected, the next largest city in the state being Mobile with a population of about 51,000. In California, a state that allows its cities to make their own charters, the following complex classification is used:

First Class.—Cities over 400,000.

First and One-half Class.—Cities between 250,000 and 400,000.

Second Class.—Cities between 100,000 and 250,000.

Second and One-half Class.—Cities between 35,000 and 100,000.

Third Class.—Cities between 23,000 and 35,000.

Fourth Class.—Cities between 20,000 and 23,000.

Fifth Class.—Cities between 6,000 and 20,000.

Sixth Class.—Cities 6,000 and under.

Some state constitutions, to guard against abuses in classification, have limited the number of classes into which the legislature may divide cities.¹ But even this precaution does not insure cities against unfair special legislation.

Prohibitions against special legislative tinkering with cities have proved totally inadequate. Realizing

¹ For example, Colorado limits the number of classes that may be created to four, Kentucky to six, Missouri to four, South Dakota to four, and Wyoming to four.

this, some of the states have gone a step farther and in their constitutions have given cities the right to make and amend their own charters. It is sometimes said that these states have granted complete home rule, but such statements are inaccurate because home rule involves the right to regulate internal affairs as well as the right to make and amend charters; and, although cities in these so-called home rule states may freely make and amend their own charters so far as the charters concern the form or structure of government, they are frequently subject to legislation affecting their internal affairs. Nevertheless the city that can determine the form or structure of its government has the most definite and tangible benefits of home rule and, from one point of view, the most important; for with this right cities may modify their structure of government as they will and thus make it more responsive to its citizens.

Twelve states thus far (1914) have granted their cities the right of home rule. They are:

Missouri	1876	Oklahoma	1907
California	1879	Michigan	1908
Washington	1889	Arizona	1911
Minnesota	1896	Ohio	1912
Colorado	1902	Nebraska	1912
Oregon	1906	Texas ¹	1912-1913

The extent to which home rule is enjoyed by cities in these twelve states is determined, partly by the provisions of the constitution itself; but to an even greater degree by the decisions of the courts interpreting those

¹ Constitutional amendment passed in 1912. Cities were empowered by the state legislature to take advantage of the amendment in 1913.

provisions. The line of demarcation between the functions of the city and those of the state is so indefinite that it is practically impossible in any constitution to establish it beyond dispute. Theoretically, municipal home rule guarantees to cities the right to control local affairs, but the great difficulty arises when an attempt is made to find for "local affairs" a suitable definition. In the absence of any constitutional provision to the contrary it is well established that the state has complete power over the affairs of the city, and in claiming the right to exercise any function the burden of proof is on the municipality. To what extent this situation is modified by constitutional provisions restricting the legislature or vesting authority in the cities is so uncertain that different courts in different states have given to practically the same words an almost directly opposite meaning. The result is that the courts can without greatly straining the language of the constitution give to cities almost complete home rule or keep them in almost complete subjection to the state legislature.

In some states the extent to which the home rule provisions apply is specifically limited by restricting the right to govern themselves to cities of a certain population. Thus in Missouri the home rule provisions of the constitution apply to cities of over 100,000 inhabitants; in California, to cities of over 3,500; in Washington, to cities over 20,000; in Texas, to cities over 5,000; and, in Nebraska, to cities of over 5,000. In Missouri the limitation is serious because only two cities, St. Louis and Kansas City, meet the requirement of the constitution. This restriction of the right to self-government to cities of a certain size shows clearly the struggle cities have had to make to obtain home rule. Not until they were forced by the growing size and importance of their cities have states accorded to

them the right to administer their own affairs; and when the states did yield it was only to the strongest and most powerful municipalities.

The provisions in the constitutions of the twelve states that have granted cities home rule vary widely. The Missouri constitution¹ provides that "any city having a population of more than 100,000 inhabitants may frame a charter for its own government consistent with and subject to the constitution and laws of this state," and then goes on to prescribe the procedure for the formation and adoption of the charter. Sec. 17 provides that "it shall be a feature of all such charters that they shall provide, among other things, for a mayor or chief magistrate and two houses of legislation, one of which at least shall be elected by general ticket."² The serious limitations in the constitution itself, apart from any construction placed upon them by the courts, are:

1. Home rule is limited to two cities.

2. The kind of government is in part prescribed, making impossible the adoption of such progressive types of city government as the commission plan and the city manager plan.

The constitution of California adopted in 1879, provided³ that "any city containing a population of more than 100,000 may frame a charter for its own government, consistent with and subject to the constitution and laws of this state. . . ." ⁴ The charter after

¹ Art. IX, Sec. 16.

² Amended so far as St. Louis is concerned in 1902. The constitution now requires only one legislative body, which must be elected by general ticket.

³ Art. XI, Sec. 8.

⁴ An amendment adopted in 1896 provides that "cities and towns . . . and all charters thereof, *except in municipal affairs*, shall be subject to and controlled by general laws." Art. XI, Sec. 6.

it has been ratified by the city must be submitted "to the legislature for its approval or rejection as a whole, without power of alteration or amendment." The constitution was amended in 1887 to include cities of more than 10,000 and again in 1890 to include "any city containing a population of more than 3,500 inhabitants."¹

In addition to the right to frame their own charters, California gives its cities the power to "make and enforce within its (their) limits all such local, police, sanitary and other regulations as are not in conflict with general laws;"² and forbids the legislature "to impose taxes upon counties, cities, towns, or other public or municipal corporations . . . for county, city, town or other municipal purposes," directing the legislature "by general laws" to "vest in the corporate authorities . . . power to assess and collect taxes for such purposes."³

In addition, cities in California are authorized by the constitution to provide in their charters for

1. The constitution, regulation, government, and jurisdiction of police courts.
2. The election, term of office, qualifications, compensation, etc., of boards of education.
3. The election, term of office, constitution, regulation, compensation, and government of police boards.
4. The general conduct of city elections and control of election boards.⁴

¹ Art. XI, Sec. 8.

² Art. XI, Sec. 11.

³ Art. XI, Sec. 12.

⁴ Art. XI, Sec. 8½, further provides that, "where a city and county government has been merged . . . into one government, it shall be competent . . . to provide for the manner in which, the

The Washington state constitution provides that "any city containing a population of 20,000 inhabitants, or more, shall be permitted to frame a charter for its own government, consistent with and subject to the constitution and laws of this state."¹ There follow directions in detail concerning the procedure cities are to use in framing and adopting their charters. In addition to the right to make their own charters, cities are definitely given authority to adopt such local police, sanitary, and other regulations as "are not in conflict with general laws."²

The Minnesota constitution provides³ that "any city or village in this state may frame a charter for its own government as a city consistent with and subject to the laws of this state." The method of framing and adopting the charter is then prescribed in detail. Originally the constitution required that all charters should provide for "a mayor, or chief magistrate, and a legislative body of either one or two houses, if of two houses, at least one of them shall (should) be elected by general vote."⁴ This was amended in 1911 to read "any such charter or any amendment or revision thereof may provide for the commission form of government having legislative and administrative powers or it may provide for a mayor or chief magistrate and a legislative body

times at which, and the terms for which the several county and municipal officers and employees whose compensation is paid by such city and county, excepting judges of the Supreme Court, shall be elected or appointed, and for their recall and removal, and for their compensation and for the number of deputies, clerks and other employees that each shall have, and for the compensation, method of appointment, qualifications, tenure of office and removal of such deputies, clerks and other employees."

¹ Art. XI, Sec. 10.

² Art. XI, Sec. 11.

³ Art. IV, Sec. 36. (As amended, 1911.)

⁴ Art. IV, Sec. 36.

of either one or two houses . . . or it may provide for any other plan or system of municipal government" not inconsistent with the state constitution.¹

Another clause of the Minnesota home rule provision which might seem to limit a city's freedom in adopting a new charter is the provision that a charter commission of fifteen is to be appointed by the district judges and not elected by the people. It is possible, however, for cities to evade this provision, if they have already adopted a home rule charter. The constitution provides that the charter commission must upon the written application of ten per cent. of the qualified electors submit amendments at the next election. By retaining the first few sections of an old charter and proposing the rest as an amendment, cities can adopt practically any kind of charter they choose without the coöperation of the charter commission.² In so far, however, as this provision affects cities that have not already adopted home rule and must therefore rely upon a charter commission appointed by the district judges for a new charter and amendments, the home rule provisions of the Minnesota constitution are open to criticism.

The Colorado provisions for home rule³ apply to Denver and other cities with a population of over 2,000 and are extremely liberal. Cities are given power, "within or without its (their) territorial limits, to construct, condemn and purchase, purchase, acquire, lease, add to, maintain, conduct and operate, water works, light plants, power plants, transportation system, heating plants, and any other public utilities or works or ways,

¹ Laws of Minnesota for 1911, Chap. 393.

² St. Paul adopted this plan in the case of its charter of 1912, which is a new charter under the guise of amendments to the old one.

³ Art. XX, Secs. 1, 4, 5 and 6. (Amendment adopted in 1902.)

local in use or extent, in whole or in part, and everything required therefor, . . . and any such systems, plants or works or ways, or any contracts in relation or connection with either . . . may be purchased by said city, which . . . shall have the power to issue bonds upon the vote of the taxpaying electors . . . in any amount necessary to carry out any of said powers or purposes, as may by the charter be provided." Cities of the first and second class have exclusive power in the making, altering, revising or amending their charter. A certain per cent. of the qualified electors may petition the council for a charter amendment or a charter convention. If the proposal to have a charter convention is accepted, twenty-one taxpayers are elected to frame and submit a charter which, if approved by a majority of those voting thereon, becomes the organic law of the city. The only express limitation on charters is the provision that "no such charter, charter amendment or measure shall diminish the tax rate for state purposes fixed by act of the general assembly, or interfere in any wise with the collection of state taxes."²

The Oregon constitution is very concise in its home rule grant to cities. It says:³ "The legislative assembly shall not enact, amend, or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the constitution and criminal laws of the State of Oregon."

¹If 5 per cent., the amendment or proposal to have a charter convention is voted on at the next general election; if 10 per cent., at a special election to be held not less than 30 nor more than 60 days after filing of petition. No special election on the same proposal may be held within two years.

²Art. XX, Sec. 5.

³Art. XI, Sec. 2. (As amended June 4, 1906.)

Oklahoma¹ grants cities of more than 2,000 inhabitants the right to frame their own charters. The procedure is briefly as follows: The legislative body in the city or 25 per cent. of the voters may demand an election to determine whether a new charter shall be adopted. If a majority favor a new charter, a board of freeholders, two from each ward, is elected. This board frames a charter which, after sufficient advertisement, is submitted to the voters of the city. If a majority approve, it is submitted for approval to the governor. The governor is required to approve if the charter is not in conflict with the constitution and laws of the state.

In Michigan the legislature is directed to provide by a general law for the incorporation of cities. Municipalities have the authority to frame, adopt, and amend their charters as well as to "pass all laws and ordinances relating to municipal concerns, subject to the constitution and general laws of the state."² While at first this appears to leave room for legislative interference and dominance in local affairs, in practice it has worked out to give cities considerable freedom. In addition to the right to make and amend their charters, certain other specific rights are given: "to acquire, own and operate either within or without its (their) corporate limits, public utilities for supplying water, light, heat, power and transportation."³ A city may sell or deliver water, light, heat, and power without its corporate limits to an amount not to exceed 25 per cent. of that furnished by it within the corporate limits, and

¹ Art. XVIII, Secs. 3a and 3b.

² Art. VIII, Secs. 20-21.

³ Art. VIII, Sec. 23.

may operate transportation lines outside the city within such limits as may be prescribed by law.¹

Under the constitution of Arizona, any city with a population of more than 3,500 may frame a charter for its own government subject to the constitution and laws of the state. The manner in which the charter is to be framed and adopted is prescribed in detail. As in Oklahoma, the charter adopted by the city is sent to the governor, who must approve if it does not conflict "with this constitution or with the laws of the state."²

The Ohio constitution of 1912 provides³ that "any municipality may frame or adopt or amend a charter for its government, and may, subject to the provisions of section 3 of this article, exercise thereunder all powers of local self-government." Section 3 contains the familiar limitation "as are not in conflict with general laws." Many miscellaneous powers are given to cities, the most important of which are the power to adopt local police and sanitary regulations; and the power to construct and operate public utilities within or without corporate limits.⁴ The specific provisions regulating the framing and adopting a charter are substantially the same as those in Oklahoma except that the approval of the governor is unnecessary. An interesting provision is that which requires a copy of the proposed charter to be mailed not less than thirty days before election to each elector whose name appears upon the poll or registration books of the last regular or general election.

By an amendment⁵ to the constitution of Nebraska

¹ Cities of less than 25,000 may not own or operate transportation facilities.

² Art. XIII, Sec. 2.

³ Art. XVIII, Sec. 7.

⁴ Art. XVIII, Secs. 3, 4, 5.

⁵ See Chapter 227, Laws of 1911, for text of amendment.

adopted in 1912, cities in that state with a population of more than 5,000 may now make their own charters. There is no restriction on the city save that found in most constitutional home rule provisions that the charter must be "consistent with and subject to the constitution and laws of this state."

The latest of the states to adopt a constitutional home rule amendment is Texas. In 1912 the proposed amendment was submitted to the people and ratified; and in 1913 the state legislature passed a law giving the amendment effect. The amendment provides that "cities, having more than five thousand inhabitants, may, by a majority of the votes of the qualified electors of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the constitution of the state or the general laws enacted by the legislature of the state. . . ." ¹ The year after the amendment was ratified, the legislature passed a law, prescribing, in accordance with the constitutional amendment, the extent to which municipalities might govern themselves and the methods by which the privilege of home rule was to be exercised. In the law, directions are given concerning the drafting and ratification of charters and some of the powers of self-government granted to cities under the amendment are definitely enumerated. In section four of the act, the legislature expressed its intention of giving to the cities of the state the full benefit of the home rule amendment, declaring "that by the provisions of this Act, it is contemplated to bestow upon any city adopting the charter or amend-

¹ Constitution of Texas, Art. XI, Sec. 5.

ment hereunder the full power of local self-government. . . ."¹

The interpretations placed upon these provisions by the courts vary widely. The difficulty arises in connection with a clause found in practically every one of the home rule provisions—a clause, too, which *must* be there if cities are not to be independent sovereignties—to the effect that the city charter must be “consistent with and subject to the general laws of the state.” Some courts have maintained that this clause does not mean that a state legislature by passing a general law can nullify any law on the same subject passed by a municipality, but that it applies only when cities go beyond the exercise of their local functions and conflict with laws or regulations that concern the entire state. Other courts have held that home rule gives cities the right to control local affairs only so long as the legislature does not see fit to control them; and that as soon as the legislature passes a law on a subject on which a municipality has already legislated, the law of the latter becomes null and void.

Of the states where the question of the extent to which the state legislature controls the city has come up for judicial determination, Ohio illustrates one extreme view and Washington another. In Ohio the courts have decided that cities are to be presumed to have complete authority over all local functions and that when the city's authority is questioned the burden is upon the one who disputes it to show that the city's authority is limited. In Washington, on the other hand, the courts have held that if the legislature passes a law on any subject, that law is supreme. It makes no difference whether the city has passed a law previously on the same subject or whether the matter is purely one

¹General Laws of Texas, 1913, Chap. 147.

of local concern. It is not even necessary that the city law conflict with the state law. If it is on the same subject, it is annulled.

Here, as in so many other contests for progress and reform, the last stronghold to be taken is the courts. After years of struggle against legislative meddling with local affairs, cities in a few states have obtained the constitutional right to be free. But even this right may be taken away if the courts by their decisions emasculate the constitutional provisions. Fortunately, thus far, Washington is an extreme case. In most of the states that have constitutional home rule, the courts by their rulings have secured to the cities a large measure of freedom.

Municipal home rule is the corner-stone of the progressive movement in American cities. Without it, it is true, cities may, and in some instances are, adopting advanced forms of city charters, improving the efficiency and promoting the economy of city government and socializing the city's activities. But so long as cities are controlled to any considerable degree by state legislatures, this work must go on in a stumbling, halting way. The issue between those who favor and those who oppose municipal home rule goes to the heart of democracy itself. It is the issue of freedom and the right of the people to rule themselves. Not until cities are free and have all the privileges and responsibilities that always accompany freedom will they measure up to their opportunity and fulfill their true function in our political life.

CHAPTER XIV

THE CHARTER MOVEMENT

A SECOND phase of the progressive movement in cities is the tendency manifesting itself all over the United States to adopt a simpler form of city charter for the purpose of making municipal government more directly responsive to popular control. Although it is true that cities can simplify—and in fact many cities have already simplified their structure of government through the state legislature and without municipal home rule—nevertheless the so-called charter movement may be regarded as the logical next step for cities that have through constitutional provisions shaken off legislative dominance and obtained the right to choose their own form of government and manage their own internal affairs.

It should be remembered, however, that home rule does not guaranty good city government any more than the right to be virtuous insures virtue. Home rule merely gives to the city a large opportunity to be efficient. A city under the complete dominance of its state legislature may have a better government than a city with the broadest home rule powers if the state legislature is benevolent and the city careless in civic affairs. The government of New York under the charter given to it by the state is more efficient than the government of Denver under a charter of its own making. Cities,

after escaping from the bondage of state legislatures, may wander many years in the wilderness of bad government before reaching the promised land of true democracy.

For the city that has obtained the right to choose its own charter and is seeking the type that will make possible the greatest efficiency in its government, there are available several new kinds of municipal charters worked out by progressive cities since the beginning of the century. Of these the most important and the most widely adopted are the commission plan and the city manager plan. The fundamental purpose underlying these two types of city government—and in fact the whole charter movement—is twofold. First, cities aim to adopt that form of city government which, by its simplicity, its absence of checks and balances, its concentration of authority and responsibility, may be easily controlled. Secondly, they aim to evolve efficient instruments and devices of control. In other words, cities are concerned with the problem of finding simple machinery of government and the means with which to operate it. A discussion of the charter movement in cities, therefore, involves not only a discussion of the commission plan and the city manager plan as forms of city government, but also consideration of non-partisan primaries, preferential voting, corrupt practices acts, proportional representation, the initiative, the referendum, and the recall as instruments with which these forms may be successfully controlled.

The first city in the United States to adopt the so-called commission plan of city government was Galveston, Texas. In September, 1900, the city was laid waste by a hurricane of unusual violence accompanied by a great tidal wave. The old council form of government, ineffective even under normal conditions, was

utterly unable to meet the situation. To save the city from complete ruin and to effect its rehabilitation as speedily as possible, an appeal was made to the governor and legislature of the state to grant a charter providing for an emergency board of five men to be appointed by the governor¹ and to have complete control over the city. The governor and the state legislature consented, and in September, 1901, Galveston began its career as the first commission-governed city in the country.

The success of the commission appointed in Galveston in building an enormous sea-wall, in repaving streets, in restoring the city's credit, and in reconstructing the city generally, so impressed the neighboring city of Houston, Texas, that in 1905 it, too, applied for and obtained a charter essentially similar to that of Galveston. In 1907 a prominent lawyer of Des Moines, having been impressed by the commission plan while on a trip through the South, on his return to Iowa, began a campaign to obtain commission government for Des Moines. In 1907 the legislature of Iowa passed a general law enabling cities with a population of 25,000 or over to adopt the commission plan. Des Moines took advantage of this act in 1907 and made the Des Moines Plan of city government known all over the country. Cedar Rapids followed in 1909; and since then cities in all sections of the United States have followed in quick succession until at the present time about three hundred cities are operating under the commission plan.²

¹ The constitutionality of this provision of the charter was successfully questioned, and it was changed so as to provide for the election of five commissioners by the citizens of Galveston. See Bradford, *Commission Government in American Cities*, p. 6.

² There are three ways in which cities may now acquire the right to adopt this new form of city government: first, under

Naturally, there are almost as many variations in the provisions of the commission charters that have been adopted as there are cities that have adopted them. In every case, however, no matter how much charters may differ as to minor details, they have certain fundamental features in common. These fundamental features of commission charters are four:

1. Authority and responsibility are centralized.
2. The number of men in whom this authority and this responsibility are vested is small.
3. These few men are elected from the city at large and not by wards or districts.
4. Each man is at the head of a single department.

1. Until recently most city charters, in imitation of the federal and state constitutions, provided for a distribution of powers among the three branches of government, the executive, the legislative, and the judicial. The mayor, with his heads of departments, constituted the executive department, a council, often bicameral, constituted the legislative department, and the state courts within the city limits supplemented by minor city courts constituted the judicial department. The theory back of this division of authority was that the most efficient government can be obtained only when power is wisely distributed among the several branches

the authority of a special act passed by the state legislature, as in the case of Galveston and Houston; second, under the authority of a general state law, allowing all cities of a certain size to adopt a law prescribed by the state, as in the case of Des Moines and Cedar Rapids; and, finally, by adopting the commission plan of its own choice under the authority of a home rule provision in the state constitution, as in the case of Oakland and Sacramento.

of government so that one branch will act as a check upon the others.

In practice, so far as cities are concerned, this plan has signally failed. It has failed largely because it proceeded on the assumption that city government is analogous to state and national government and that a system that works well for one will work well for all. As a matter of fact, there is a closer analogy between the management of a city and the management of a business corporation than there is between the management of a city and the management of the nation or of a state. City administration is largely a business problem and must adopt the methods of business; and just as any large business corporation would fail if the conduct of its affairs were entrusted to a number of individuals or groups of individuals for the express purpose of having some check others, so city business has failed because state legislatures have entrusted the administration of the affairs of cities to various bodies that could not agree upon and were meant not to agree upon a plan of action.

The most serious practical defect of this "checks and balances" type of city charter is the divorcement of authority from responsibility. This defect manifests itself in at least two ways. In the first place, under the old type of city government, it is almost impossible to fix responsibility with certainty. If, for example, a great fire breaks out in a city and an attempt is made to fasten the blame upon the mayor, he may with some degree of plausibility say that he could not prevent fires because he was not given sufficient money by the city council to supply efficient fire apparatus. In the second place, the severance of responsibility from authority places an executive or administrator in the position of being forced to ask the council to pass ordinances

regulating matters concerning which the executive or administrator knows everything and the council practically nothing. Ordinances and regulations governing details of administration should be passed by those immediately responsible for their execution. If, for example, the police department feels the need of additional rules regulating the licensing of street venders, it should have the power to pass the rules which its experience teaches will be adequate to meet the situation instead of depending upon a council the members of which are probably ignorant on the whole matter.

The commission form of city government removes these weaknesses that exist in the old plan of city government by concentrating in the one board all administrative and legislative powers. It is not possible for the members of the commission, if a holocaust happens, to disclaim all responsibility. They are directly responsible, for they had the power to make regulations as well as the power to carry them into effect. Nor is it necessary where such a concentration of power exists for administrators to appeal to a legislative body for authority to adopt regulations which the administrators find necessary. The commission that executes the ordinances makes them and the fault is its own if it does not make those that it needs.¹

2. Power centralized in the hands of fifty men would not result in commission government. It is not centralization alone that the commission form emphasizes; it is centralization in the hands of a *few* men. Thus in no instance does a commission charter provide

¹It seems hardly necessary to remind the reader that the powers of the commission are limited by the provisions of the charter, and that the commission could not pass laws in violation of them. It is in the making of minor rules and regulations that the commission has complete authority.

for more than nine commissioners, and in the majority of cases the number is limited to five.

The advantages of such concentration are obvious. In the first place, it tends to induce abler men to enter politics. Capable men demand responsibility and authority, and when they realize that they are to be members of a commission of five in whose hands the management of the affairs of the entire city is to be placed, they are very likely to become interested. In the second place, the fact that there are only a few men at the head of the city government makes it possible for citizens to take a more active and intelligent interest in municipal affairs. Each commissioner is a conspicuous figure, known all over the city; the acts of the commission are easy to follow; and the individual citizen knows exactly to whom he should go to make his protest count. In the third place, a small commission makes possible the transaction of a large amount of business effectively and expeditiously. There are no lengthy debates; the five commissioners gather about a table in the council room, talk over a proposition informally, discuss it from all angles, and then cast their votes.

3. In the election of the council by the city at large, the commission form again departs radically from the old "checks and balances" plan. Under the old plan each section or ward was given separate representation in the city council, while under the commission form the members of the commission are elected from the city at large. Election at large is an almost unqualified improvement over ward representation. Candidates must be more widely known and therefore in all probability are better qualified; there is less opportunity for machine manipulation of votes; and, most important of all, the interests of the whole city and not those of any

particular section are likely to be uppermost in the minds of the commissioners.

4. In every commission city each commissioner is placed at the head of a particular department. Thus in Des Moines there are five departments—public affairs, accounts and finance, public safety, streets and public improvements, and parks and public property—with a commissioner at the head of each. In many cities one of the commissioners, in addition to serving as head of a city department, acts as mayor and in that capacity presides over council meetings and represents the city at public ceremonies. Usually, however, the commissioner who serves as mayor has no veto power over the acts of the commission. Commissioners are assigned to their respective departments in one of three ways: they may be elected to the particular departments by the voters themselves; they may be assigned to a department by the commission as a whole; or, finally, they may be assigned by the mayor.

There has been considerable discussion concerning the relative advantages of the first of these methods, viz., "election to a specific office" and the two others, namely, "election at random."¹ In support of the first method, it is urged that commissioners feel their responsibility to voters more keenly when they have been elected to a specific office; that better men can be chosen because there is an opportunity to study the qualifications of candidates in the light of the office they are to fill; and that the possibility of bickering among the commissioners after election to decide which shall have the different departments is removed.

At least one argument can be advanced in favor of "election at random." It frequently happens that two

¹ See an article in *National Municipal Review*, October, 1913, pp. 661 *et seq.*

or more men both of whom are well qualified to serve as commissioners run for the same office. Under the system of "election to specific office" the city would necessarily lose the services of one of these men; while under the "election at random" plan both might be chosen and later appointed to particular departments. For instance, there might be three bankers running for places on the commission. All three might be exceptionally well qualified for a specific office and in addition be better general administrators than any of the other candidates in the field. And yet under "the election to specific office" method all three would probably be candidates for commissioner of public finance and thus two competent city officials would have to be sacrificed and inferior candidates accepted instead.

In addition to these four essential features of commission government, there are many most interesting minor provisions, which because of lack of space cannot be discussed here. What is most significant about the commission plan as a part of the progressive movement in American cities is the fact that it makes it extremely difficult for any organized corrupt influence exerted by political bosses or special interests to control the city government, and at the same time its simplicity, its lack of checks and balances make it easy for interested citizens to take an active, intelligent interest in municipal affairs. Commission government has its limitations, as will be pointed out in the discussion of the city manager plan, but compared with the old mayor and council type of city government, it is a decided step in advance.

Commission government has now been in operation sufficiently long to reveal some rather serious weaknesses on the administrative side. Most cities in framing commission charters thought that they would obtain the best results if commissioners were required to de-

vote their entire time to their offices. That is to say, in most commission cities, commissioners are the real and not the nominal heads of city departments. From this requirement alone arise many limitations of commission government. In the first place, the very meager salaries that most cities are willing or able to pay, while not sufficiently large to induce prominent business men—men of affairs fitted to run city departments—to devote their entire time to the work, are exceedingly attractive to the politicians who could earn little or nothing in any other field. In the second place, the plan of electing commissioners directly by the people makes it difficult to obtain men of the right caliber. Commission government has attempted the impossible task of finding three or five or seven candidates who are politically popular and at the same time efficient administrators. Mr. H. S. Gilbertson, in an interesting analysis,¹ quotes the case of Wichita, Kansas, on this point. There one of the commissioners is an ex-street laborer. Politically, the man was popular enough to win an election; and yet it is perfectly obvious that digging in streets cannot fit a man to administer the technical details of a city department.

Another serious weakness of the commission plan arises from the fact that it provides for no single, responsible, administrative head of the city government. All the commissioners are elected by the people. Each is in charge of a single department. Each wishes to make a record in that department and is likely to care little about what happens in the other departments. No one commissioner has power to take charge and consequently there are likely to be as many governments in a commission city as there are commissioners.

¹ American City, September, 1913. *Some Serious Weaknesses of the Commission Plan.*

Commission government, therefore, is strong on the political side because it gives the voters direct and easy control over candidates and officials. It is weak on the administrative side, because no provision is made to obtain expert service and no single official is given full power.

The city manager plan retains all the advantages of the commission form and eliminates most of its weaknesses. The council or commission is kept, but instead of administering the city's affairs itself, it hires an expert called the city manager to manage the city in its stead. The manager has full power of appointment and removal of heads of departments and is held responsible for the entire city government. This plan makes the council or commission a board of directors and the head of the city a business manager.

The evolution of the city manager plan is most interesting. Its germ was contained in the Galveston commission charter which allowed men to act as commissioners without giving full time to their departments. The practical result of this provision was that prominent business men ran for office and when elected engaged competent subordinates to do the actual work, while they, the commissioners, acted as directors and supervisors.¹

The first city in the United States to adopt the city manager plan in anything like the form in which we now know it was Staunton, Virginia. In 1908 this little city with a population of about 12,000 adopted the

¹It is interesting to note that a plan was proposed (but rejected) in Grand Rapids, Michigan, which provided for four general managers—one for each of four departments—to be appointed by the mayor, and to receive a salary of \$3,000 a year. Had this plan been adopted, it would have been little more than a modification of the Galveston plan as it has worked out in practice.

charter which has since become known as the "Staunton Plan." In this case, as in the case of Galveston, necessity was the mother of invention. The constitution of Virginia required that cities of 10,000 or more inhabitants must have as part of their government a bicameral council and mayor. Staunton did not want a council and a mayor, but, being forced to accept them, devised a scheme to secure efficient city government in spite of those obstacles.

The Staunton charter provides that the council shall appoint an officer to be known as general manager, who is to hold office for one year unless sooner removed by the council at its pleasure. It further provides that the general manager shall devote his entire time to the duties of his office and shall have charge and control of all the executive work of the city in its various departments, and have entire charge and control of heads of departments and employees of the city. The mayor is the official head of the city and has charge of the police and fire departments. But the general manager buys all the supplies for these departments as well as for all other departments and is required to make quarterly and annual reports showing in detail all work done by him. The general manager keeps a regular set of double entry books which serve as a complete check on the office of city treasurer. The general manager and treasurer both render monthly balances to the council, one operating as a check on the other.

Increased impetus was given to the spread of the city manager plan when, in 1910, the National Short Ballot Organization in response to a request from the Lockport, New York, Board of Trade, prepared a model city charter of the city manager type. The Board of Trade, after a careful consideration of the proposed charter, indorsed it and recommended to the state legislature

that a law be passed empowering the city of Lockport to adopt it. The legislature, however, refused, and so Lockport did not have an opportunity to experiment with the city manager plan.

The Board of Trade, however, had caused to be printed and distributed a number of copies of the charter in pamphlet form. It was the circulation of this proposed Lockport charter more than the adoption of the city manager plan by Staunton that acquainted cities with the new type of city government and encouraged them to experiment with it later on.

In 1912 the legislature of South Carolina passed an act allowing cities of more than 10,000 and less than 20,000 inhabitants and cities of more than 50,000 and less than 100,000 inhabitants to hold an election to decide whether they wished to adopt the commission form of government. Special provision was made in this act for an election in Sumter, at which the voters were to decide whether Sumter should adopt "The Commission Form of Government" or "The Commission Form of Government with a City Manager." The vote was three to one in favor of the city manager plan.

Under the terms of the act, if the city adopted the commission form with a city manager, a mayor at \$300 per annum and two councilmen at \$200 per annum were to be elected. "The mayor and councilmen . . . shall not distribute the powers of said council among the members of the same; but shall employ a male person of sound discretion and of good moral character not of their number, of such salary and upon such terms as they may decide, who shall be subject to such rules and regulations as may be provided by said councilmen."¹

The first council elected in Sumter under the new

¹Sec. 30, Commission Form of Government Act, as ratified by the South Carolina Legislature, Session 1912.

plan set out in earnest to find the most competent man to take the position of city manager. To obtain the best results, it sent the following notice throughout the country:

Oct. 14, 1912.

"The City of Sumter hereby announces that applications will be received from now till December the first for the office of City Manager of Sumter.

"This is a rapidly growing manufacturing city of 10,000 population, and the applicant should be competent to oversee public works, such as paving, lighting, water supply, etc.

"An engineer of standing and ability would be preferred.

"State salary desired and previous experience in municipal work.

"The City Manager will hold office as long as he gives satisfaction to the commission. He will have complete administrative control of the city subject to the approval of the board of three elected commissioners.

"There will be no politics in the job; the work will be purely that of an expert.

"Local citizenship is not necessary, although a knowledge of local conditions and traditions will of course be taken into consideration.

"A splendid opportunity for the right man to make a record in a new and coming profession, as this is the first time a permanent charter position of this sort has been created in the United States.

"At the request of the City Commissioners, these applications will be filed with the Chamber of Commerce of Sumter, A. V. Snell, Secretary."¹

¹ *The City Manager Plan of City Government*, National Short Ballot Organization, p. 6.

In response to this advertisement, 150 replies were received. In 1913 Mr. M. M. Worthington, a former civil engineer from Virginia, was selected. Already Mr. Worthington has demonstrated the advantages of the new system by installing a cost system that will save half of his salary on one or two items.¹

The city of Dayton, Ohio, taking advantage of the home rule clause in the constitution of 1912, prepared and adopted May 20, 1913, a new charter of the city manager type. Section 3 of the charter in describing the new form of government, says "The form of government . . . shall be known as the 'Commission-Manager Plan' and shall consist of a commission of five citizens who shall be elected at large in manner hereinafter provided. The commission shall constitute the governing body with powers as hereinafter provided to pass ordinances, adopt regulations, and appoint a chief administrative officer to be known as the 'City Manager,' and exercise all powers hereinafter provided."

Sec. 47 provides that the city manager is to be appointed by the commission without regard to his political beliefs or residence within or without the city. He is the administrative head of the municipal government, is responsible for the efficient administration of all departments, and may be removed at the will of the commission or by the recall of the electorate.

The powers and duties of the city manager under the Dayton charter are:

- (a) "To see that the laws and ordinances are enforced;"
- (b) "To appoint and, except as herein provided, remove all directors of departments and all subordinate officers and employees in

¹ *Ibid.*, p. 6.

- the departments . . . ; all appointments to be upon merit and fitness alone, and in the classified service all appointments and removals to be subject to the civil service provisions of this charter ;”
- (c) “To exercise control over all departments and divisions created herein or that may be created by the commission ;”
 - (d) “To attend all meetings of the commission with the right to take part in the discussion, but having no vote ;”
 - (e) “To recommend to the commission for adoption such measures as he may deem necessary or expedient ;”
 - (f) “To keep the commission fully advised as to the financial condition and need of the city ;” and
 - (g) “To perform such other duties as may be prescribed by this charter or be required of him by ordinance or resolution of the commission.” ¹

Springfield, Ohio, followed the example set by Dayton, and on August 26, 1913, adopted the city manager plan. Other cities have followed and everything seems to indicate that the city manager plan will be a permanent contribution to the science of municipal government.

Thus far in this chapter the commission plan and the city manager plan of city government have been considered as structures of government, machinery to be controlled. No discussion of these two new types of city government would be complete, however, without a brief discussion of the devices that are used in

¹ Sec. 48.

controlling them. Among the most important of these devices are non-partisan primaries, preferential voting, corrupt practices acts, proportional representation, the initiative, the referendum, and the recall.

Practically every commission-governed city provides for the nomination of candidates by petition and in no other way. In some cases the charter provides that a small percentage of those voting at a preceding election and in other cases that a small absolute number, by signing a petition and filing it with the proper city official by a specified time, may have placed upon the ballot the name of any person as a candidate. The names of the persons so nominated are arranged on the ballots in alphabetical order and no party emblems are used. The practical effect of this system of non-partisan primaries is to destroy political parties in cities and at the same time to make it easy for any group of citizens to take part in municipal government and place a candidate in the field.

The importance of preferential voting in connection with city government is that it makes unnecessary the usual two elections, i. e., the primary election and the regular one. Instead of voting for five candidates to fill the five offices, each voter selects five as his first choice and five as his second. If each of five candidates has not received a majority of the votes, the first and second choice votes are added together and the five who have a majority of first and second choice votes combined are declared elected.¹

The corrupt practices provisions in most commission city charters are very severe. Candidates are forbid-

¹ If no majority results after first and second choice votes are added together, another election must be held. Other methods are sometimes used.

den to canvass for votes, to make any preëlection pledges to appoint men to office, and in some instances to use automobiles or other vehicles to carry "last minute" voters to the polls on election day. The provisions of the Springfield, Ohio, charter on this point are worth quoting: "No candidate . . . shall make any personal canvass among the voters to secure his nomination or election, or the nomination or election of any other candidate at the same election. . . . He may cause notice of his candidacy to be published in the newspapers and may procure the circulation of a petition for his nomination; but he shall not personally circulate such petition, nor by writing or otherwise solicit anyone to support him or vote for him. He shall not expend or promise any money, office, employment or other thing of value to secure a nomination or election; but he may answer such inquiries as may be put to him and may declare his position publicly upon matters of public interest, either by addressing public meetings or by making written statements for newspaper publication or general circulation."¹

The fundamental idea back of proportional representation is to substitute for geographical representation numerical representation. Under the "block" plan of voting, commissions are elected to represent the city as a unit. Under that plan, if 6,000 of the 10,000 voters of a city voted for a certain candidate, that candidate, having received a majority vote, would be declared elected and would represent the entire 10,000. In reality, he would represent only 6,000—those who voted for him. Proportional representation provides that all constituencies of a reasonably large number shall be represented even though they are not strong enough to command a majority of the votes. Under a

¹Sec. 3, Charter of City of Springfield.

system of proportional representation, therefore, in the case supposed above, each group of five hundred or a thousand voters, even though in the minority, would have some one to represent them.¹

There are serious objections to proportional representation under the commission plan, but it is well suited to the city manager plan of city government. The chief objection to its use in connection with the commission plan is that the commission is primarily an administrative body and therefore should represent unified rather than conflicting interests. Under the city manager plan, however, the commission is primarily a deliberative body, the administrative duties being given to the city manager; and, for that reason, it is frequently advisable that as many different interests as possible be represented.

The initiative, the referendum, and the recall have already been discussed at considerable length in connection with the progressive movement in the state and there is no need therefore of giving them much space here. It is sufficient to point out that in commission government or under the city manager plan where great authority is given to those in power it is essential to the preservation of democracy that there be a direct and sure control in the hands of the electorate. This control, so far as men are concerned, is given to the voters of commission cities by the recall; so far as measures are concerned, it is insured through the initiative and the referendum.

The commission and city manager plans of city government, together with the devices necessary to control them, insure to American cities all that the charter

¹ For a detailed exposition of the plan, see National Short Ballot Organization, *The City Manager Plan of City Government*, pp. 17 *et seq.*

movement stands for: the simplification of government, the fixing of responsibility, and the constant and certain ability of the people to step in at any time and direct their own affairs.

CHAPTER XV

THE EFFICIENCY MOVEMENT

Good city government, as has already been pointed out, does not necessarily result when cities are given the right to frame their own charters and regulate their own affairs under a constitutional home rule provision; for cities may never take advantage of the opportunity, and, even if they do, they may provide for themselves a worse government than that given to them by the legislature. Nor does good city government necessarily result when cities adopt progressive forms of city government, such as the commission plan or the city manager plan; for, although the simplification of the structure of government makes it easier for citizens to control, they may be too ignorant or too careless to use the opportunity; and although, because of the concentration of authority, the men in office could do a great deal of good, the wrong men may be chosen and do an equal amount of evil. Municipal home rule merely gives a city the chance to obtain good government by removing legislative interference from without; commission government and the city manager plan merely increase that chance by making easy the removal of corruption and graft within. No guaranty of good government comes with either.

There has grown up in recent years, along with the home rule movement and the charter movement and as

a kind of supplement to them in the work of municipal regeneration, a movement commonly known as the efficiency movement. The movement is incapable of any concise definition, and in fact of any definition at all, because it is itself a protest against generalizations and definitions, standing for the specific study and solution of particular problems. The fundamental ideas underlying the efficiency movement are that there is no panacea for municipal ills; that municipal home rule, commission government, and city managers are merely means to an end; that municipal problems depend for their solution upon the same scientific study and analysis that banking problems or railroad problems require; that any attempt to remove inefficiency and waste must be continuous and not intermittent; that honesty and good intentions cannot take the place of intelligence and ability; and finally that city business is like any other business and needs precisely the same kind of organization, management, and control.

Most cities, in reaching the final stage of the efficiency movement, pass through two preliminary stages. The first of these preliminary stages is a period of disorganization, of slovenly and careless methods, of duplication, inefficiency, and waste. Becoming dissatisfied with this state of affairs, cities in the second stage turn to organization and method for the correction of existing conditions. System is apotheosized. Uniformity, standardization, and concentration are made the watchwords of municipal progress. At last, finding that too much system is almost as inefficient and wasteful as not enough, that too great dependence upon rules is as bad as too great dependence upon men, and that the difficult and technical problems of city government are not forever solved by the mere installation of uniform methods and accounts, cities enter upon the final stage

of the efficiency movement and prepare to solve each problem in the light of the peculiar circumstances surrounding it.

In the average American city, in the absence of the application of the principles of the efficiency movement, disorganization, with resulting inefficiency and waste, manifests itself in every bureau and department and in a hundred different ways; two men drive a street sweeper that could be manipulated by one; wooden block is used for pavements where cobblestones would do as well or better; two tons of coal are used to generate the same amount of steam that a private corporation would generate with one ton. Lack of space makes impossible anything like an adequate consideration or even enumeration of these instances of bungling methods in city government.

A fair idea of the character of this disorganization may be gained, however, by a brief consideration of some of the larger and more important city functions, such as the making of the city budget, the regulations governing the work and compensation of city employees, and the purchase of city supplies.

Cities that have never given the matter very careful attention are apt to prepare and pass their budgets in a most inefficient and unscientific manner. Departmental estimates are submitted too late to permit careful analysis before the budget is passed; the methods used by various departments differ; no adequate system is provided for checking up departmental estimates with probable needs; no comparisons are made between appropriations for the current year and those for the year preceding; department heads are not required to keep a record showing how the past year's money was spent. The process is largely one of applying to the council board of commissioners or board of estimate, as the case

may be, and requesting ten, twenty or a hundred thousand dollars for operating expenses. Requests for appropriations are all lumped together under salaries and supplies and granted or rejected as the revenue controlling power sees fit. The opportunities for graft, inefficiency, and waste under any such system of determining a city's expenditures are apparent. Department heads feel no pressing need of becoming efficient themselves or of encouraging efficiency on the part of those under their charge; for they receive their appropriations whatever happens. Appropriations granted may be diverted to almost any purpose because little limitation or condition is made in the grant. And, finally, economy is discouraged because departments are not held to account for the disposition of their money.

In the case of the regulations governing the work and compensation of city employees, the situation is equally bad. Having passed the civil service examination and obtained a position in the city service, an employee is required to meet no further tests of fitness and so at the end of ten years of service may know less and know it worse than when he entered the service. No record is kept of the time when employees begin and stop work nor of the amount and kind of work done during a stated period. No comparisons are made between the work done by employees in one department and that done by employees of a corresponding rank in other departments; nor between the work of different employees doing similar work in the same department. Employees who show initiative, energy, and ability may go ahead; those who show the opposite traits, dependence, listlessness, and incompetence do not go behind; they stay in the department and exert a demoralizing influence on the work of the others. As a result of all

these things, slovenly, careless, wasteful, inefficient work is frequently the rule.

When we turn to the matter of compensation of employees, we find a situation substantially the same. No rational basis is used to fit salaries to the ability of the man or the importance of his position. In some cases the amount is traditional, in some cases dependent upon influence with the head of a department, in most cases merely arbitrary. As in the case of the amount and kind of work done, no effort is made to compare the salaries of men doing the same work in different departments, in the same departments, or in outside business establishments. Men doing precisely the same work receive widely differing salaries. Clerks who could not command six hundred dollars a year in the business world receive nine or twelve hundred through the protection of civil service or lack of proper system. Padded payrolls, swollen budgets, and high taxes, as well as waste and inefficiency, are the inevitable concomitants of such a state of affairs.

In the average American city that has not yet been touched by the efficiency movement, supplies are as badly managed as the city budget or the regulations governing the work and compensation of employees. This bad management extends both to the purchase and the disposition of supplies. Each department buys its own supplies; one pays fifty cents for an article; another pays seventy-five, and another a dollar. Contracts are let without adequate notice to bidders to insure competition, and without ascertaining the reliability of the successful competitor. Insufficient means are taken to make sure that departments order only what they need and receive what they order. Careful comparisons are not made to see whether the city is paying for its supplies more than current market prices. The same con

fusion prevails in connection with the use of city supplies. No means are available to see that city departments use supplies economically, for the purposes intended, and in an efficient manner. Ten tons of coal are used where five would do. Pea coal is used for a stove designed to burn egg coal, and two pounds of steam are generated when an outside factory would generate a dozen.

Cities, appreciating the impossibility of obtaining good government with such disorganization and such methods as those just outlined, set about to effect an improvement. The things that seemed most needed to bring order out of chaos, organization out of disorganization, and simplicity out of complexity, were system, standardization, and uniformity. These ends became and still are in many minds the open sesame to efficient city government. Accounting systems are worked out in the abstract or in connection with a particular department and then applied to many or all. A standard blotter, pen-wiper, ink-eraser, automobile, fire-bucket and office equipment are selected and imposed upon all the city departments. Elaborate rules are laid down for letting contracts, and for ordering, receiving, and using supplies. In general, in a city that is passing through the second preliminary stage of the efficiency movement there is a tendency to become system-mad.

As in the case of the first preliminary stage of the efficiency movement, it will be best to consider the second phase of the efficiency movement in its relation to a few of the city's largest undertakings; and, as before, the preparing and passing of the city budget, the regulations governing the work and compensation of city employees, and the ordering and use of city supplies have been chosen.

The effect of introducing scientific methods and prin-

ciples into the preparation and passing of a city budget is to eliminate most of the defects already mentioned in connection with budget-making in cities that have not yet reached the second preliminary stage of the efficiency movement. Departmental estimates are required to be submitted sufficiently early to permit careful analysis before being passed; the methods of preparing estimates in the different departments are made uniform; departmental estimates are carefully checked up with probable needs; year-to-year comparisons of departmental requests are made; and departments are required to keep records showing how the last year's money was spent.

The most important improvement made in budget-making, however, is the so-called segregated budget. Department heads no longer are allowed to ask for lump sum appropriations for wages and supplies; but they must specify in detail for what purposes they intend to use the money and then adhere to that disposition. The headings under which appropriations are requested and approved in the budget of New York, together with the subdivisions, are as follows. They are given at length because they illustrate the extreme to which system is being carried.

1. Personal Service.
 - a. Salaries.
 - b. Wages.
 - c. Fees.
 - d. Others.
2. Supplies.
 - a. Food Supplies.
 - b. Forage and Veterinary.
 - c. Fuel Supplies.
 - d. Office Supplies.

- e. Medical and Surgical Supplies.
- f. Laundry, Cleaning and Disinfecting Supplies.
- g. Refrigerating Supplies.
- h. Educational and Recreational Supplies.
- i. Botanical and Agricultural Supplies.
- j. Motor Vehicle Supplies.
- k. General Plant Supplies.
- 3. Equipment.
 - a. Office Equipment.
 - b. Household Equipment.
 - c. Medical and Surgical Equipment.
 - d. Live Stock.
 - e. Motorless Vehicles and Equipment.
 - f. Motor Vehicles and Equipment.
 - g. Wearing Apparel.
 - h. Educational and Recreational Equipment.
 - i. General Plant Equipment.
- 4. Materials.
 - a. Highway Materials.
 - b. Sewer Materials.
 - c. Building Materials.
 - d. General Plant Materials.
- 5. Contract or Open Order Service.
 - a. General Repairs.
 - b. Motor Vehicle Repairs.
 - c. Light, Heat and Power.
 - d. Janitorial Service.
 - e. Transportation.
 - f. Communication.
 - g. General Plant Service.
- 6. Contingencies.
- 7. Fixed Charges and Contributions.
 - a. Dept. Service.
 - b. Rent.

- c. Pensions.
- d. Insurance.
- e. Care of Dependents in Private Institutions.
- f. State Taxes.
- g. Advertising.

To remove the inefficiency and waste that result from lack of organization and method in the regulations governing the work and compensation of employees, cities are using the same elaborate and thorough-going devices that are used in connection with the budget. By introducing system and checks, it is sought to reduce dependence upon the individual employee to a minimum and to compel efficiency by making all employees live up to definite requirements.

The chief problem that a city encounters in its attempt to introduce efficiency, so far as the work of city employees is concerned, is to make sure that the city receives the right amount and the right kind of work from its employees. In the absence of system, individual employees are apt to come and go when they please and the amount and kind of work depend frequently upon the mood they are in when they do it. By adopting a working day that begins at nine and ends at five instead of a working day that begins at nine or ten and ends at three or four, and using time clocks to make certain that city employees put in a full working day, cities are doing a great deal toward insuring the performance of a reasonable amount of work. By introducing time sheets on which each employee is required to account for every fifteen or thirty minutes of the working day, stating precisely the work he has done; by comparing the work statements made by different employees in the same department with those of employees in different departments and thus putting the

men on their mettle, cities believe that they are in a fair way to secure the right kind of work.

But the most important thing for a city in its relations with its employees is not to secure the right kind and amount of work in the abstract, but the right kind and amount in proportion to the compensation paid. A city must see that it receives a fair return for money spent for personal service. It must not pay any position too much or too little. The process by which cities are trying to fit the amount of compensation to the amount and kind of work done is known as the standardization of salaries. To enforce the proposition equal pay for equal work; to eliminate the demoralizing effect upon employees that results from the suspicion that "pull" and influence and not work count; to save for the city the money that is given to overpaid employees—are the reforms standardization of salaries is intended to effect.

The method used by the Standardization Committee of the Board of Estimate in New York City to standardize salaries was as follows. As a first step, blanks were distributed among the city employees themselves. On these blanks employees were asked to state exactly the work that they were accustomed to do in connection with their respective positions. The statements on these blanks were then verified by investigations under the supervision of the Standardization Committee. Finally, the blanks containing the employees' own statements on the duties of the various city positions, verified by independent investigators, were submitted to the bureau or department heads for their approval. On the basis of these statements, positions are being graded and classified and an attempt is being made to attach a fair salary to each.

With regard to the purchase and disposition of sup-

plies, the two chief devices that many cities are introducing to promote efficiency are a central purchasing agency and the standardization of supplies. The principal advantages claimed for the purchasing of supplies through a central purchasing agency are that articles can be bought more cheaply because they can be bought in larger quantities; that more reputable firms will be induced to bid for contracts if the order is a large rather than a small one; that the duplication incident to the maintenance of a supply bureau with offices, staff, etc., in each of a number of departments is eliminated; that supplies can be more readily controlled and graft removed; and that the participation by all city departments in determining what standard is to be adopted for an article that is used by all will result in the choice of a higher standard of article and one better suited to its purpose than if each department made its own selection.

Standardization necessarily follows the establishment of a central purchasing agency. By standardization is meant deciding upon the supply best suited for a particular purpose and then using that supply and no other for that purpose. If hospitals are using linen gauze that costs thirty cents a yard when gauze at five cents a yard would answer the purpose just as well; if employees are feeding with egg coal a furnace designed to consume pea coal; if street cleaners need five-dollar brooms, and are using brooms that cost only two; the principle of standardization of supplies is being violated.

The second preliminary stage of the efficiency movement, the stage that emphasizes uniformity, system, standardization, and the suppression of the individual, is the phase through which most cities that have taken up the efficiency movement are now passing. While

the results obtained from the application of the principles for which this phase of the movement stands are vastly superior to those that obtain in a city that is disorganized and unscientific, there are nevertheless several decided limitations that must be overcome before real efficiency is secured.

One of these limitations of the efficiency movement as it exists now in many cities is an overemphasis on system. So many forms and so many regulations are prescribed that greater inefficiency and waste sometimes result than if there were no system at all. A city department to obtain a pound of nails may have to go through so much red tape that whatever is gained for the city by the protection against possible graft is more than offset by the time and energy wasted. The letting of contracts may be so carefully guarded by intricate and minute provisions that city departments may have to order snow shovels in July and window screens at Christmas. It is notorious that the best firms are reluctant to do business with cities that are oversystematized because they have to wait so long for their money. To protect itself from the individual the city has tied him up with hundreds of rules and regulations that frequently get in each other's way.

A second serious limitation of the present manifestation of the efficiency movement is the craze for and confidence in uniformity and standardization. Uniform accounts, uniform records, uniform methods are worked out and prescribed for all departments. Salaries and supplies are carefully standardized. Everything is done to eliminate individual and special requirements.

The following quotation from the book of a leading efficiency expert is worth quoting because it shows the extent to which this insistence upon standardization has

been carried and the readiness with which fundamental difficulties are passed over:

"Should six departments indicate that they will continue to require cement, lubricating oil or erasers, the problem which next presents itself is to determine the best cement, the best lubricating oil and the best ink eraser for the respective purposes to which they are applied by the departments and, so far as possible, to eliminate special requirements with a view to uniformity. This result can best be brought about through coöperation between the purchasing agent and the representatives of the various consuming departments who have expert knowledge of their special needs. To avoid friction and any possibility of favoritism it may be wise to have a committee of principal officials, such as a committee of the board of commissioners, sit as a commission on standardization for final approval of the standard articles selected. The purchasing agent will naturally endeavor to secure the broadest uniformity, while among departments there will be a tendency, more or less expressed, to adhere to the special articles which custom and habit have seemed to make particularly desirable.

"Open-minded coöperation in the consideration of standards should lead, without exception, to the adoption of a common standard throughout the city for every article used. A variety of considerations will be involved in the selection of standards of which price is only one. More important than price is serviceability and, following close in order of importance, the extent to which the standard admits of competition in bidding."¹

¹Bruère, *New City Government*, pp. 212-213.

The writer of this passage admits that individual departments will show "a tendency . . . to adhere to the special articles which custom and habit seemed to make particularly desirable"; but he contends that "open-minded coöperation . . . should lead, without exception, to the adoption of a common standard throughout the city for every article used." The false assumption throughout the passage—and it is the false assumption of all who rely too much upon uniformity and standardization—is that special requirements are in the last analysis unimportant and that the best results can be obtained even if they are ignored. A uniform, standard article adopted as a compromise of the conflicting interests of a number of city departments may be precisely suited to no department; just as a remedy prescribed by a doctor for each of fifty patients might do some good to all of them but the most good to none. Of course, it is better to specify for all departments particular articles or systems of accounts that are certain to be of some value even though not the greatest to each than to allow each department to provide for itself articles and accounting systems that are worthless. But it is even more desirable to find for each department that article or that system of accounts that will be of most value in meeting the special requirements of that department. And this cannot be done by "reconciling" conflicting needs and imposing the same methods and materials on all.

What is true in the case of supplies is even truer in the case of men. Standardization of salaries tends to defeat itself. It fixes a limit which all employees must reach but which no employee need go beyond. Like civil service rules, it tends to discourage energy, initiative, and originality. Every position is defined in terms of the work done by the weakest and not the

strongest employee who occupies that position. Character, capacity, and personality cannot be standardized. It might be worth while for a city, under special circumstances, to pay one man \$5,000 for filling the same kind of position that other men were paid \$3,000 to fill, solely because of the difference in the *way* he filled it. It is true that in most cases it would not pay; it is true that in *most* cases standardization of salaries does work an improvement. But it is in changing *most* to *all*, in making the inductive hazard, that standardization and uniformity break down.

A third limitation of the efficiency movement as interpreted by many cities is the insistence upon the elimination of individuality and personality. City departments tend to become, like corporations, soulless. Efficiency is substituted for, instead of added to, character and moral energy.¹ So long as the efficiency movement proceeds upon the assumption that it is possible to prevent dishonesty, corruption, waste, graft, and inefficiency and conversely to obtain honesty, fidelity, efficiency, and capacity in the face of the opposition of employees themselves, by the institution of elaborate devices and systems, it must fail. No man can be made efficient unless he wants to be; nor will any man continue to be efficient against his will. In the fields of engineering and business, the efficiency movement is broadening out to include a study of the capacity of the man as well as the capacity of the addressograph and steam-shovel. It is only by making the individual man see the relation of his work to the whole and the importance of his doing his work well, thereby motivating an employee's every movement, that real efficiency can be obtained.

¹ For an extreme view of the importance of efficiency in personal make-up, see Allen, *Efficient Democracy*, Chap. I, "The Goodness Fallacy."

The efficiency movement, in its true sense, aims to remove the limitations that result from a too hasty application and too superficial an understanding of efficiency principles. Every problem is studied and solved on its own basis. If better government will result, the efficiency movement recommends a different system of accounts for every department, as many different kinds of supplies as there are departments that use them, and a different salary for every city employee. Whether these are necessary or not cannot be answered without special consideration of every case. Each department must be considered in its relation to other departments. In every department the advantages of uniformity as opposed to diversity must be determined in the light of the peculiar condition in that department. In a word, the efficiency movement frankly acknowledges that there is no royal road to efficiency; that no single reform will insure it; that it comes only through continuous, exhaustive, scientific study of concrete problems as they arise.

One of the most important developments in connection with the efficiency movement in cities is the rise of independent citizen agencies such as bureaus of municipal research, bureaus of public efficiency, bureaus of economy and efficiency, and other organizations with trained experts to give continuous study to city government. Within the last ten years organizations of this kind, independent of city governments and supported entirely by private contributions, have been established in New York, Philadelphia, Dayton, Cincinnati, Milwaukee, Hoboken, and other cities. In addition to these municipal bureaus, county bureaus of research, modeled after those in the cities, have been created in Wayne County, Indiana, Westchester County, New York, and Hudson County, New Jersey.

The most prominent of these organizations and the one after which most of the others have been patterned, is the Bureau of Municipal Research established in New York City in 1906. The purposes of the bureau, as stated in its articles of incorporation, are "to promote efficient and economical government; to promote the adoption of scientific methods of accounting and of reporting the details of municipal business, with a view to facilitating the work of public officials; to secure constructive publicity in matters pertaining to municipal problems; to collect, classify, analyze, correlate, interpret and publish facts as to the administration of municipal government."¹

The methods pursued by the Bureau of Municipal Research in carrying out the purposes of its incorporation are chiefly three: first, to investigate city departments with a view to locating waste and inefficiency; second, to make constructive suggestions as to how waste and inefficiency may be removed and economy and efficiency substituted in their stead; and, finally, to give publicity to its findings and suggestions. In detail, the method of operation used by the bureau is as follows:

"Confer with the official responsible for the municipal department or social conditions to be studied.

"Secure promise of coöperation, and instructions that direct subordinates to coöperate with the bureau's representatives.

"Ascertain how the powers and duties (and other materials of research) are distributed.

¹ *Six Years of Municipal Research*, p. 4. Issued by the Bureau of Municipal Research, New York City.

"Examine records of work done and of conditions described.

"Compare function with result and cost as to each responsible officer, each class or employee, each bureau or division.

"Verify reports by usual accounting and research methods and by conferences with department and bureau heads.

"Coöperate with municipal officials in devising remedies so far as these can be effected through changes of system.

"Make no recommendations as to personnel further than to present facts throwing light on the efficiency or inefficiency of employee or officer or to suggest necessary qualifications and where to find eligible candidates.

"Prepare formal report to department heads, city executive officers and general public: (a) description, (b) criticism, (c) constructive suggestion.

"Support press publicity by illustrations, materials for special articles, facts for city officials, editors and reporters.

"Follow up until something definite is done to improve methods and to correct evils disclosed.

"Supply freely verifiable data to agencies organized for propaganda and for legislative, agitative or 'punitive' work.

"Try to secure from other departments of the same municipality and from other municipalities the recognition and adoption of principles and methods proved by experience to promote efficiency." ¹

¹ *Six Years of Municipal Research*, p. 8.

In the seven years of its existence the Bureau of Municipal Research has done much to improve municipal government in New York. It has been largely instrumental in introducing the principle of a segregated budget; has helped in the reorganization of the finance department; has revised the accounting systems of many departments and by a special study of the accounting system in the department of water supply has been able to increase the city revenues from water rents about \$2,000,000 a year. It has, moreover, made a beginning in the standardization of salaries and supplies and strongly urges a central purchasing agency in all city departments. As important as its work within the departments have been its efforts to give effective publicity to municipal problems. By budget and other exhibits, by weekly bulletins, by newspaper and magazine articles, and by attempting to simplify and clarify unintelligible city reports, it has brought home to citizens the fundamental facts of city administration. In addition, it has established and directs a National Training School for Public Service, the purpose of which is to give young men and women who desire to enter the field of civic or social service an opportunity to study city problems at first hand.¹

Although it is true that the Bureau of Municipal Research has contributed a good deal to the cause of good government in New York City, it is only fair to point out certain limitations to which it is, of necessity, subject. Perhaps the most serious limitation is the inability of the bureau to deal with fundamental problems involving a question of policy. Questions such as the

¹In practice, because of lack of proper organization, failure to meet individual needs, and a tendency to use the training school as a mere tool of the bureau, the training school has not met with the success which such an institution deserves.

wisdom of abolishing the Board of Aldermen, controlling public utility corporations by contract or franchise, adopting municipal ownership of subways, etc., the Bureau of Municipal Research in New York—and in fact bureaus of municipal research anywhere—do not and cannot touch. Their effectiveness, their ability to command confidence, depend upon their non-partisanship, absence of special pleading. Bureaus of municipal research present facts: they do not support them except to show that they are presented accurately. They deal with questions concerning which men disagree with each other because of ignorance of the facts, and attempt to remove that disagreement by producing the facts.

The great problems of city government—and, indeed, of all government—are questions of policy, questions on which men disagree even when they know the facts and, in a sense, because they know the facts. Whether a department should use nineteen accounting forms where one will do as well; whether a city employee should charge \$1.50 for a five cent valve wheel; whether an employee should receive \$1,800 a year for doing more poorly the same kind of work for which another man is paid \$300; whether the revenues of the water department should be increased \$2,000,000 a year by installing a new accounting system—these are questions of fact and detail on which men do not, as a rule, disagree. Whether government should be made more responsive to the people by removing an antiquated and almost useless Board of Aldermen that costs the city about \$150,000 in salaries alone; whether a city shall own its railways or lease them on favorable terms to be exploited by private interests; whether a city shall be dominated by a political machine or boss—are questions of policy on which men do disagree. Questions of policy are more fundamentally important than questions

of fact; but with them the New York Bureau of Municipal Research in particular and bureaus of municipal research in general have little or nothing to do.¹ The work which bureaus of municipal research do is important. From the point of view of the progressive movement, the work which they do not do and cannot do is more important. Within a narrow field, a bureau of municipal research, by a constant and scientific study of specific municipal problems, can be a prime factor and exponent of the efficiency movement in the broadest sense of that term, and can perform a service of inestimable value in the struggle for good city government. But outside of that field it cannot go without confounding issues and impeding progress.

The efficiency movement, then, the third of the four movements that make up the progressive movement in American cities, aims to sharpen the instrument of democracy. To change the figure, the efficiency movement repairs and adapts the machinery of government which the home rule movement frees, the commission movement simplifies, and the social movement uses in the interests of the people. The importance of the efficiency movement should not be underestimated nor should it be overestimated; above all, its true relation to the fight for a broader democracy should not be lost sight of.

The efficiency movement is concerned merely with improving government, the tool of democracy; it has no part in directing its use. If government is controlled

¹ This statement is well illustrated in the case of the agitation in New York City, when the subway contracts for the extension of the city's rapid transit system were considered. Although these contracts involved the expenditure by the city of nearly \$200,000,000, and, although the Bureau of Municipal Research, because of its independent position and corps of trained men, could have done much to make the merits of the question clear to the people, the Bureau took practically no part in the discussion.

by the people, the efficiency movement becomes an asset. If government is controlled by interests inimical to the people, it is no reason for discarding the efficiency movement. It is an added reason why the people should capture the improved government which the efficiency movement has created.

CHAPTER XVI

THE SOCIAL MOVEMENT

AFTER it has freed itself from the domination of a state legislature too often hostile to its best interests; after it has simplified its structure of government so as to make it more amenable to popular control; after it has made its government thus freed and simplified, efficient and economical, the city is prepared to direct its attention to the social phase of the progressive movement.

In the nation, as has already been pointed out, this final phase of the progressive movement manifests itself primarily in the conservation of natural resources; in the states it manifests itself primarily in the conservation of human resources by enacting laws to prevent and relieve social and economic distress. In the city, it manifests itself in an extension of community regulation and control over community problems. The conviction has been growing in recent years and has been made stronger as city needs have become more and more acute and pressing with the rapid increase in population and the consequent congestion—that certain activities hitherto left partly or entirely to individual control and management to be conducted for private profit are essentially public in their nature and should be governed by the community in its own interest. For a long time this phase of the progressive movement has

been ignored because of the great insistence that has been placed upon efficiency, economy, and better municipal administration; and even to-day it does not receive the attention which it deserves. But the appointment of a committee on social welfare by the Board of Estimate in New York City, the increasing interest in city planning and municipal ownership, and the growing realization of the responsibility of a municipality for the recreation of its inhabitants, are indicative of a quickening of community consciousness in our municipal life.

The first of the responsibilities which the progressive movement believes that the community in a city should assume, in addition to those which it already bears, is the responsibility for a city plan. While it is not true that individuals have been allowed consciously to direct and shape a city's growth and development by means of a city plan, it is nevertheless strikingly true that indirectly the interests of private individuals have almost exclusively determined the direction and extent of cities' growth. By speculating in realty values, by raising and lowering rents, by controlling the services and charges of public utility corporations, by providing extensions to existing transit lines in accordance with private profit rather than the community's needs, by building terminals, stations, and wharves where they have seen fit and in a hundred other ways, private individuals and not the community have been responsible for the character and extent of the development of cities. All these activities that directly or indirectly determine or help to determine the direction, extent, and character of city growth, the progressive movement proposes to place under community control by means of a city plan.

Broadly considered, a city plan is an intelligent provision, based upon a careful consideration of all the

factors involved, to determine and regulate the physical growth and development of a city. It is not, as a false emphasis that has been placed upon it by many writers, especially the earlier ones, would make it appear, primarily concerned with making a city beautiful, although it does incidentally accomplish that result. Winding roadways, ornate buildings, elaborate terminals, narrow, picturesque streets, are not the vital considerations in a city plan. It is rather to promote convenience in communication, security of health, and opportunity for recreation that the city plan is designed. Another erroneous impression in addition to the one which connects a city plan with a city beautiful, is the impression that a plan is made to serve for all time. Although it is true that in the case of certain cities, notably the city of Washington in our own country, that once-for-all plans have been made and have needed substantially no modification, the changing conditions of the bustling commercial and industrial centers would cause any ordinary plan to be quickly outgrown. What is needed, therefore, is a broad planning policy that can be consistently followed, leaving the details to be attended to in the light of special circumstances as they arise. Finally, there is an impression abroad that city planning includes the correlation and guidance of all city activities and problems, that all agencies that promote the city's welfare, educational, social, and moral, are to be combined in one comprehensive scheme to serve the city's best interests. In its strict sense, city planning includes none of these things, but is limited to the control and guidance of those factors that affect the physical growth of the city.

The factors that are related most closely to the physical growth of the city and which therefore are the factors that determine the elements of a city plan, are

chiefly six: the natural physical characteristics of the city; the means of communication between the city for which the plan is intended and other cities; the means of communication within the city; the housing problem; the health of the city's inhabitants; and, finally, the need of providing recreation. That the physical characteristics of a city play an important part in fixing upon a city plan is obvious to any who will consider the matter. The plan that is adapted to the city placed upon a plain will not do for the city that is set upon a hill; nor will the plan that fits an inland city or one situated entirely on one bank of a river do for the seaport metropolis or the city which a river cuts in twain. Washington, Albany, St. Louis, St. Paul, Des Moines and Philadelphia all have individual needs that can be met only by individual plans. Instead of attempting an imitation that is bound to be fatal, instead of trying to adapt the so-called checkerboard plan to a city whose characteristics lend themselves more readily to a hub-and-spokes plan, city plans should use the physical peculiarities of cities as aids in working out a general scheme.

A second factor in determining the nature of the city plan is the means of communication and commerce between the city for which the plan is designed and other cities. The route by which railroads enter a city, the structure—grade, subway, or elevated—that is used, the location of terminals and the correlation of interurban with intraurban transit facilities, play an important part in shaping a city's growth. Some cities have treated the railroad as an interloper and criminal and have compelled it to enter the city by a side street and back door; others have welcomed it eagerly and have set aside a roadway along the waterfront or through the heart of the best section of the city for its use. Some

cities have allowed railroads to maintain their tracks at grade, creating a nuisance by the noise, sparks, and cinders, and endangering human lives. Others have required railroads to use subways or elevated structures, thereby economizing space and diminishing the nuisance and the possibility of accident. In most instances, however, the route and the structure have been decided by the railroad itself or a comparatively few interested property holders without any regard for its effect upon the community as a whole. Because of their influence upon the character and development of the district in which they are located; because of the convenience of passengers; because of their relation to the entire transit system of a city, railroad terminals should be located in accordance with the carefully determined policy of a definite city plan. It is little short of absurd that a great railroad corporation, like the Pennsylvania Railroad, should build a well-equipped station in a city like New York in an inaccessible part of the city where it must remain for years, completely detached from the city's rapid transit systems. "The entire apparatus for rail transportation in a city—street railways, rapid transit lines, and the so-called terminal facilities by which long distance railroads exchange passengers and freight with the local transportation services and shippers—should be developed comprehensively as one enormous complex machine in the interest of the whole community which it serves, regardless of the subdivisions of agencies employed to construct and operate the parts. . . ." ¹ Mr. Olmsted might have included as a part of the same comprehensive scheme, docks, wharves and other water terminals because in many cities the

¹ Frederick Law Olmsted, *The Town-Planning Movement in America*, Annals of the American Academy of Political and Social Science, January, 1914, p. 180.

location of these terminals, the ease with which transshipments can be made, the coördination of docks and wharves with public markets, affect the general welfare of many cities even more than the location of railroad terminals.

Closely associated with interurban commerce and terminal facilities as a factor in city planning are the intraurban means of communication and intercourse. Whether the city owns its transit lines or not, it is of the greatest importance that they be made to conform to a uniform city plan, because of the universal dependence upon them. The great desideratum is a single system of trolley lines, subways, and elevated lines; but unfortunately, most cities have been so short-sighted in their franchise grants that there have grown up a number of rival, competing lines which refuse to lend themselves to the provisions of a coördinated city plan. In such cases, the work of the city planner is confined almost entirely to regulating extensions where effective supervision can be exercised to prevent the repetition of mistakes already made. Nothing is more certain in city development than that transit facilities are among the most potent factors in determining the direction and extent of a city's growth; and nothing should be made more certain than that those vital factors should not be used against the public interest by real estate speculators and other private individuals merely to develop portions of the city in which they are financially interested. To bring under subjection to the community's interests railway lines already built, to place under subjection those about to be built, should be the policy of the city with a plan. Over three hundred and twenty-five million dollars are being spent in New York City to make extensive additions to its rapid transit system; and yet the city is spending comparatively little to de-

termine or control the effect those additions will have upon the growth and welfare of the city. The short-sightedness of this policy will be apparent twenty or thirty years hence when mistakes that are now made will be too costly to mend.

The city street, common and prosaic as the term sounds, is as essential a part of the means of intraurban communication and intercourse as the subway, elevated, and trolley lines; and even more so, for the route of railways, even in the case of subways, is absolutely dependent upon it. A map of a city is a map of its streets. Streets are the city's arteries. Wherever they extend, the city's life blood flows. Where they are narrow and constricted, the city's pulse is weak; where they are wide and open, industry and commerce beat quick and strong. They are as important to the city as air and sunlight and should be made to serve the city as a whole. And yet, in spite of their importance in determining the city's social and economic welfare, practically nothing has been done in America in planning streets scientifically. On the contrary, the location, width, and arrangement of streets have been left to chance or to the real estate developer or private property owner. The result is the worst kind of chaos and confusion. Although it is manifestly impossible for cities already established to reconstruct their streets on any extensive scale, it is possible for them to have in mind some general plan which may serve as a basis for making alterations and additions in the future. Such a plan should not be fixed and inflexible, but should be based upon a scientific study of the conditions in the individual city to which it is applied. The broad principle that should guide a city in making its street layout is the need of providing for citizens all over the city easy, direct, and quick means of communication. To

that end, there should be several main arteries of traffic connecting railroad terminals, ferries, public buildings and the more important business centers of the city. If these main arteries are provided, the less important side streets can be used in part for recreational purposes. The city street in crowded districts is the children's playground;¹ and where traffic is not heavy, broad sidewalks might be laid on which children might be permitted to play; all the more so, since if increased traffic necessitates a wider roadway the space appropriated for sidewalks could readily be restored.

No other factor enters more directly into a city plan than the housing problem, and in no other field is city planning expected to show more definite results. While it is the aim of the city plan to give to as many citizens as possible sanitary houses advantageously situated, it must be remembered that a certain portion of the population in all cities will, for a long time to come, be so poor that they will be unable to live in anything better than the tenements in the crowded districts. Most of the legislation on housing has aimed to eliminate the conditions that exist among the poorest classes; and little attention has been given to the problem of providing better houses for the more numerous middle classes. A first step that is frequently taken by European cities to promote better housing conditions is to separate the business, manufacturing, and residential sections by dividing the cities into zones. Such a scheme, although it may help to improve conditions, is bound to fail ultimately, however, unless the broad economic and social factors that determine the distribution of the city's population are taken into considera-

¹See Jane Addams, *The Spirit of Youth and the City Streets*, for an excellent exposition of the influence of the street on child life.

tion. These factors are accessibility to work, accessibility to recreational centers, and the cost of the materials that go into the home.¹ "The distribution of industrial, commercial and business centers, the distribution of parks, playgrounds, schools, theaters, museums, etc., contribute to the economic and social environment which determines to a very considerable extent the cost of a home and rents. The city plan and the distribution of the factors constituting the economic and social environment as expressed in terms of facilities, time, and cost of transit, determine the non-creative land values of a community which are an important factor in housing reform and which a carefully developed community plan may reduce to a minimum. By reducing the need for transit facilities through a proper adjustment and distribution of the factors that are essential to the economic and social life of the people and by providing an evenly distributed municipal transit system . . . the enhancement of land values may be checked and congestion with its attending evils avoided."² Having done what it can by means of a city plan to promote better housing conditions through the control of the first two factors, there remains to be considered the question of actual cost. This difficulty can be met by municipal tenements and homes; by cooperative building and loan associations; or by the erection of model houses by private individuals. It is doubtful whether much relief can be expected from the model tenements and model settlements conducted by private enterprise. In the first place, the movement is too spasmodic and the houses built too few to accommodate

¹See Carol Arondovici, *Housing and the Housing Problem*, Annals of American Academy of Political and Social Science, January, 1914, p. 4.

²*Ibid.*, pp. 4-5.

any considerable portion of the population; and, in the second place, the charges are usually beyond the reach of the poorer and even the lower middle classes. The solution of the housing problem, so far as a solution is possible, will undoubtedly come through community action working through a city plan.

A fifth factor that enters into the making of the city plan is the need of protecting the community health by regulating the community growth. One way in which a city plan can help in protecting the community health is by providing for an efficient system of waste removal. Because of the varying conditions of size, population, location, etc., no one plan can be devised that would answer the needs of any large number of cities; but there are nevertheless certain broad principles that should be kept in mind. The first is that a general plan for a sewage system should be prepared in advance and followed as closely as possible. The second is that every precaution should be taken in disposing of sewage and other filth that disease is not spread. If sewage is run into bays or rivers, pollution should be carefully guarded against; and if disposal plants are used, care should be taken to see that they are placed in those parts of the city where they will be most serviceable as a part of the sewage system and at the same time cause the least nuisance. Finally, it should be remembered that the whole problem is a costly one and that no expense should be spared in working out and adhering to a plan that will protect the health of the city.

Another way in which the city plan can help in protecting the community's health is by insuring proper light and air in streets and houses, through the limitation of the height and width of buildings. Although conditions in this country are much different and justify

a more intensive use of land in our large cities, it is nevertheless notable that the Woolworth building in New York, the highest in the United States, is over six hundred feet higher than any inhabited building in London, Paris, and Berlin. Only recently have American cities come to appreciate the tremendous social importance of regulating the size of structures erected along their streets. The standards usually employed in fixing a reasonable height and width for a building are the width of the street and the size of the lot on which it is built. No arbitrary limit need be fixed provided the regulation results in fairness to all. Mr. Lawson Purdy, of New York City, has suggested that a fair test to be applied to determine the height and width which should be allowed in a given area would be to ask what would result if all the houses in that block were of the same height and width. At all events, the problem is one that calls for community control. The individual who owns a single lot between two tall skyscrapers is helpless unless he wishes to and can afford to erect a similar structure on his own property, or the community intervenes to protect him.

A sixth and final factor that enters into the making of the city plan is the need of providing community recreation by means of parks, museums, libraries, etc. With the general policy of recreation, the city plan has nothing to do; it merely aims to place the means of recreation in the places where they will do most good. In the case of parks, the first need is to have as many parks as possible; and the second to have them located most advantageously. One fifty-acre park situated in a remote section of the city or even in the heart of the city will be infinitely less valuable for recreational purposes than a hundred half-acre parks scattered throughout the city. The importance of providing for parks in advance where

they are going to be most needed cannot be overestimated. A small bit of land in the heart of a district infested by gangsters and thugs cost the city of New York over \$300,000, although it could have been bought for a small fraction of that amount had the need for it been foreseen. And yet it was worth all that was paid for it and more because of the quiet transformation which it worked in the entire surrounding neighborhood. So far as the city plan is concerned with public buildings, such as museums, libraries, etc., it should provide that as far as is possible they be distributed throughout the city; and where such distribution is not feasible, as in the case of art museums, etc., that they be readily accessible from all parts of the city.

A second extension of community activity proposed by the progressive movement in the city is community ownership and operation of public or community utilities. The question of municipal ownership has been discussed so fully and so often that it is unnecessary here to present any elaborate arguments for or against it. The facts concerning the advantages and disadvantages of public ownership, the experience of cities that have experimented with it, have been compiled and interpreted. The important question for cities to decide now is not whether municipal ownership is theoretically good or bad; but rather whether, in the light of this information and practical experience, they wish to try it; and, if so, how they may put it into effect. The real objections to municipal or community ownership of public utilities to-day, therefore, are not the academic and theoretical objections often raised, but the practical difficulties of putting it into actual operation.

Before passing on to a discussion of these difficulties, it may be well to call attention to two considerations, which from the point of view of the progressive move-

ment, constitute unanswerable arguments in favor of community control of all gas, water, electricity, and transit corporations. In the first place, these corporations depend upon special privileges granted to them by the public. They frequently have the right to condemn land so that they may have a right of way; and they lay and keep their tracks, pipes, mains, and wires in the public streets. Every grant given to them is at the public's expense. In the second place, the public is absolutely dependent upon these corporations for the services which they render. No individual in a city can do without gas, electricity, water, or transportation any more than he can do without light and air. Nor will it do to say that the individual can command efficient service at reasonable rates by fostering competition. Public utility corporations are usually monopolies and rightly so. It would be wasteful and inefficient to have five or six different companies with as many different sets of equipment supplying gas, water, electricity, and transportation to a city. Monopolies, therefore, are essential; and because they are monopolies and deal in public necessities through the use of public property, they are proper subjects of community ownership and control.

The practical difficulties in the way of community ownership are chiefly four: legal, contractual, financial, and governmental. Legally many cities are without the power to adopt a policy of municipal ownership because they are without the right of municipal home rule. Before New York, Boston, Philadelphia and in fact nine out of ten cities in the United States receive permission from the legislatures of their respective states or are given the power under a constitutional home rule amendment, all discussions as to the desirability of municipal ownership, so far as they are con-

cerned, are purely academic. That the states will give this right to their cities is at present not very likely. Beyond the fact that states are on the whole reluctant to allow cities any latitude in the conduct of their own affairs, many states have entered upon a policy of regulation through state commissions and similar agencies which they are unlikely to abandon; and even in some states, where municipal home rule is in force, the interpretation placed upon its provisions by the courts have greatly curtailed the city's powers.

Even if the city did obtain the permission of the state to buy up public utility corporations, there would remain the difficulty of obtaining the consent of the corporations to sell. Many of these corporations have perpetual franchises; and in almost every case, the franchise extends over a long period of years. These franchises have been repeatedly held to be property even where they have been granted for nothing, and courts have often valued them at many millions. Since confiscation of these franchises is impossible, the only course open to cities that wish municipal ownership is to buy relief from the obligations which the states have imposed upon them. Even in the case of short-term franchises, the amount of money required for this purpose would be formidable; while in the case of long-term and perpetual franchises where the purchase price would have to be estimated on the present worth of future earnings for scores of years, it would be practically prohibitive. Moreover, many cities, notably New York and Chicago, are already committed to a policy of regulation through franchise agreements. Thus in New York City, the Interborough Rapid Transit Company operates the subways under a definite agreement as to profits, etc. To change this policy, to relieve itself from all the contractual obligations which

it has assumed, is not the least of the difficulties that confront the city that would own its public utilities corporations.

A third difficulty in the way of municipal ownership is the financial difficulty. The impracticability of raising funds to buy up the franchises of public utility corporations has already been touched upon; there is, however, another phase of the difficulty which remains to be considered, and that is the limitations placed upon the power to borrow money. There is in many states a debt limit imposed upon cities fixed usually at an amount equal to a certain percentage of the assessed valuation of the city's real estate. In New York City, for example, the city may borrow money to the extent of ten per cent. of the assessed valuation of the real property in the city. As a result of this restriction, New York City is within a few hundred thousand dollars of its borrowing margin and probably could not raise the money necessary for municipal ownership were all the other difficulties removed. Unless the debt limit is extended or removed or the bonds issued for the purchase of public utility corporations exempted from the debt limit before they are self-sustaining, if it is reasonable to expect that they will become self-sustaining, the hands of most cities, so far as municipal ownership is concerned, will be tied.¹

A final difficulty in the way of municipal ownership of public utilities is the governmental one. By governmental difficulty is meant the objection most commonly raised against the assumption by the government of any private enterprise, that it is impossible to eliminate

¹ The constitution of New York provides for exemption from the debt-limit of "bonds issued to provide the supply of water." There is no reason why such exemption should not cover other public utilities as well.

graft, corruption, inefficiency, and dishonesty from any public enterprise. In making this objection to municipal ownership, just as in making objection to so many other public enterprises, the defenders of "stand-pat-ism" fail to appreciate the true condition of affairs under private management. The record of stolen franchises, corruption and special influence in politics, inadequate service, and the use of extensions to increase realty values rather than to supply service, is a long one; and were it not for the most rigid kind of control, by commission and otherwise, the same evils would continue unmitigated to-day. As it is, the service, rates and general operation of public utilities in most of the cities of the United States do not furnish great cause for pride. Whether municipal ownership and operation will improve conditions in any particular city it is impossible to say; the only way to determine is to try it. One thing is certain and that is that it has been tried in many cities here and abroad in connection with various public utilities with marked success. There is no good reason why public operation should be synonymous with corruption and inefficiency; and with the coming of simpler and more direct government; of new ideals and standards of service; and the increasing prominence of the city expert, there is every ground for believing that it will soon cease to be so.

The way to overcome these four practical difficulties in the way of municipal ownership, though not easy, is very clear. Cities must insist upon the right to be free—free to determine their own policy with regard to community utilities. To remove the difficulties that arise out of existing contractual obligations, cities must either buy franchises outright; or make a special agreement with franchise owners whereby a portion of the company's earnings may be set aside as a fund for the

amortization of the franchise value, imposing upon those who refuse to accept such an agreement a heavy franchise tax, denying them extensions, and other privileges; and, finally, in some cases by entering into active competition with the public utility corporations. To make municipal ownership possible financially, the debt limit must be extended or removed so far as public utilities are concerned. And, finally, simpler forms of city government should be introduced; the new tendency in the direction of greater efficiency and economy in city service should be encouraged; and above all, citizens should be educated to the point where they expect and demand the highest type of officials and service in the management of municipal affairs.

In addition to community control of community growth and development and community ownership and operation of community utilities, the progressive movement in the city proposes community use of community values for community purposes. The theory upon which this proposal of the progressive movement is based is the theory upon which the argument for the single tax rests; i. e., that the increase in the value of real estate results from the activity of a community in building up the neighborhood in which it is situated and does not depend upon any one individual owner. To allow the property owner who has done nothing but invest his money in land and then await the efforts of others to develop it, to reap the profits of others, is, in the opinion of those who support the single tax, unfair and even dishonest. Their proposal is, therefore, that the benefits of increases in land values be taken from private individuals and given to the community as a whole, in order that the income thus derived may be devoted to defraying the expenses of government. The imposition of such a single tax would enable a city not only to

abolish all other forms of taxation and still have ample funds to run the government; but also, according to Henry George, the most prominent advocate of the single tax in the United States, practically eliminate poverty and distress.

Because of the obvious practical difficulties involved in taking all land in a city from private individuals and turning it over to be managed by the community as a whole, the single tax, in its original form, is very rarely adopted. There have grown up, however, several modifications of it, all of which tend to accomplish the same general end. One of these modifications is seen in the proposition that is now frequently made to place a larger tax proportionately upon land than upon buildings. In the larger cities, this proposition seems very reasonable inasmuch as buildings are of relatively little value and it is the situation of the property and not what is on it that counts. In New York State, the proposal to shift more of the burden of taxation upon land has found definite expression in the past few years in bills presented to the legislature the object of which is to halve the tax rate on buildings.¹ The ends which the advocates of these measures have in mind are chiefly two: in the first place they expect to increase the city's revenues by increasing the tax on land; and in the second place, to encourage a wider distribution of population and a relief of congestion by making it profitable to build more buildings and thus bring about a lowering of rents. It is doubtful whether the plan proposed will accomplish either of these two results. In the first place, if the revenues of the city are to remain the same, the amount of income lost by removing the tax on buildings must be supplied by increasing the tax on land;

¹The latest of these bills, the Herrick-Schaap bill, was presented to the state legislature in 1914.

and it is likely that such an increase, because it will result in diminished land values, will tend to diminish the tax on land values and thus defeat its own purposes. As to the second object of the advocates of the plan; i. e., the lowering of rents and the relief of congestion, it is probable that here, too, the results that are expected will not be wholly attained. If the tax on buildings is reduced or removed, the tendency will be to start a boom in buildings that will cause an increase in the prices of building materials and start in a reaction toward fewer buildings. On the other hand, the increase in the tax upon land and the fact that it is accessibility to business and social centers that determines almost entirely where people live, will cause a more intensive use of the land and consequently greater congestion in the crowded parts of the city than there is at present. Neither as an attempt to increase the city revenues nor as an attempt to lower rents does this proposal to halve the tax on buildings promise any great success.¹

A second modification of the single-tax idea that is frequently suggested is a tax on the increment or realty values as determined by the increase in assessed valuation or by the prices which it brings in the market at successive sales. In its report to the Board of Estimate and Apportionment in New York City on January 11, 1913, the Commission on New Sources of City Revenues recommended such a tax in the following language: "We, therefore, recommended an increment tax of one per cent. per annum to be perpetual upon all increments of land values as shown by comparison with the assessed valuations of the year 1912 . . . and to be in addition to the general tax levied upon all real

¹See *Taxation of Real Estate Values*, by Delos F. Wilcox, *Annals of American Academy of Political and Social Science*, January, 1914, pp. 34 *et seq.*

estate. If, for instance, the assessed value of a piece of land rises from \$100,000 in 1912 to \$110,000 in 1913, the owner would be called upon to pay the general tax, say, at the rate of 1.83, which would amount to \$2,013, and in addition the increment tax of one per cent. of \$10,000 or \$100." As a device for giving to the community definitely the increment in realty value which the community creates, this modification of the single tax is much more direct and effective than the first plan discussed. It is, however, open to serious objection because of the method by which the increment, on which the tax is to be based, is found. By imposing a tax on the assessed valuation of property from year to year, a city is taking an unfair advantage of the property owner and is taxing something as indefinite and changeable as stock values. If the increment were determined by taking the average increase over a period of years, or if it were determined by comparing the price paid at two successive sales, the tax would be much more equitable. So far as the tax on increments relates to the problem of housing and congestion, it involves an entirely new set of considerations, which it is not necessary to discuss here. The important thing for the progressive movement in connection with increments is that a fair and just method be used to insure to the community a reasonable portion of the increase in property value which it helps to create.

A final extension of the activity of the community advocated by the progressive movement is greater community control over recreation and pleasure. The need of a larger community control in this direction arises out of the fact that in the city, because of the peculiar industrial conditions under which men and women are forced to work and live, the insistence upon excitement

and intense pleasure is more pronounced and more dangerous than anywhere else. The farmer or the merchant in the country town performing a variety of interesting activities under agreeable circumstances finds almost complete satisfaction in his work and looks upon his leisure hours as an opportunity to rest and recuperate. The clerk in the office, closely confined to a few routine duties in unpleasant surroundings, the girl in the sweatshop or factory performing monotonous mechanical actions in the midst of the most depressing influences, of necessity look upon work as drudgery and seek their real existence in the hours when they are free. In proportion as their work is confining, nerve-racking, and tense, their desire for excitation, stimulation, and strong sensation is stronger. Recreation and amusement become the vital factor in people's lives no less necessary than food or drink.

The agencies that exist in most cities to meet this craving for recreation and amusement are at present almost entirely private individuals whose sole aim is profit. Recreational facilities are commercialized. The moving-picture show, the theater, the dance hall, the saloon, and the brothel are all organized on a commercial basis to take advantage of the intense seeking after pleasure and to make money out of it. Under such a system, pleasure inevitably becomes vice; and gambling, drunkenness, and prostitution, the three great evils of city life, become widespread.¹ Cities accept these evils as necessary features of city life, and it is only when the organized panders to depravity and degeneracy become so bold and obnoxious as to be a public

¹ For a powerful treatment of this whole question, see chapter on "Control of Leisure" in *The American City*, by Delos F. Wilcox.

nuisance that the community as such feels called upon to intervene.

It is the conviction of those who believe in community provision for the recreation of a city's inhabitants, that while all vice and crime cannot be removed by any single device, the evil results, especially those that are due to a conscious appeal to the lower instincts by commercial agencies can be greatly reduced by intelligent community action. To take the place of tawdry, cheap moving-picture shows catering to the taste for the sensational and the exciting, the city can supply municipal moving-picture theaters where there may be exhibited films that will have all the attractiveness and none of the dangers of those exhibited now. In place of the saloon or the street corner as the meeting-place of men and boys and the breeding place of gangsters and rowdies, the city can open up the schools to serve as club-rooms and gymnasiums. In place of the dance hall, too often but an adjunct to the saloon and brothel and the means of securing recruits to the constantly depleting ranks of white slaves, the city can provide municipal dance-halls conducted under proper supervision and giving opportunity to young men and young women for social intercourse of a helpful, stimulating kind. The agencies for carrying on this work are already at hand: the school, which now stands idle many hours in the day and many months in the year, the parks, the recreation piers, might all be pressed into service. But even if the agencies were not at hand, the money spent by a city in wresting recreation from private agencies and placing it under the direction of the community could not be more profitably invested. In the city, life is pleasure, and pleasure is life. If the American city fails, it will fail not because of the work its people do or the places in which they live, but

because of the pleasures which they seek. It is vice, high living, and deterioration of moral fiber more than anything else that destroy cities and democracies.

This, then, is the program of the progressive movement in the city so far as the last, or social phase, is concerned. To extend the community's activities; to provide community control of the community growth and development by means of a city plan; to provide community ownership and operation of community utilities; to provide community use of community values for community purposes; and, finally, to provide community regulation of community recreation;—these are the extensions of the functions of government for which the progressive movement in the city stands. Freed from the state legislature, simplified in its structure, perfected in its operation, vitalized and enlarged in the scope of its activities, city government will be well equipped to meet the needs of its citizens and to fulfill its mission of democracy.

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